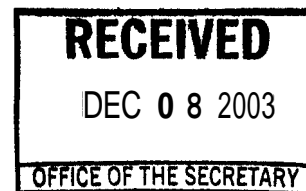


Public Investors Arbitration Bar Association

December 2, 2003

Jonathan Katz, Secretary
U.S. SECURITIES & EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, DC 20549-0609



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Executive Director

Mark E. Maddox
Director Emeritus

RE: Proposed Revisions to NYSE Constitution
File # SR-NYSE-2003-34; Release # 34-48764

Dear Mr. Katz:

I write on behalf of the Public Investors Arbitration Bar Association (PIABA) in response to the Commission's request for comments on the proposed changes to the Constitution of the NYSE set forth in the above-referenced Release, particularly as those changes pertain to the creation of an "independent" Board of Directors ("the Board").

Members of Interim Board Are Not Adequately Representative of the Public Investor, Lack Substantive Backgrounds in Securities Regulation and Oversight and Have Too Many Ties to Corporate America and the Financial Services Industry

Although the selection of an "interim Board" is a *fait accomplis*, PIABA nonetheless feels compelled to express its concern about the composition of the interim Board insofar as it is supposed to be representative of the average public investor toward whom this entire restructuring is ostensibly aimed and insofar as it sets the standard for the future.

While all of the interim directors are highly accomplished individuals in their own right, their biographies reveal that none of them are representative of the average public investor or even likely to have any real concept of what it means to be an average public investor. Moreover, the biographies set forth in the Release indicate that many of the members of the interim Board lack the qualifications to suggest any real substantive knowledge or appreciation of regulation of the securities industry or the interaction between member-firms, the NYSE and the investing public.

Equally as troubling are the historical ties between many of the interim Board members and corporate America and/or the financial services industry.

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While these choices may be completely appropriate for the newly formed "Board of Executives" - whose function is described in the Release as "preserv[ing] the engagement of the broker-dealer community and listed company community" - PIABA fails to see how either the NYSE or the SEC can - in good faith - hold out the "interim" Board of Directors as truly independent of those they are charged with overseeing.

It is PIABA's hope that the SEC will insist that future NYSE Boards be more representative of the average public investor and be populated with individuals whose backgrounds evidence more experience in securities regulation and less ties to the institutions the Board is charged with regulating.

The Proposed Appointment of a "Public Investor Representative" to the Board of Executives Does Not Adequately Address the Concerns of the Public Investor

The interim Board recently voted to amend the proposed revised constitution to require "at least one individual intended to represent individuals who invest in equity securities and are retail clients of member organizations." This decision of the interim Board appears to be an act of disingenuous political tokenism designed to create the impression of sensitivity to the "public investor" without effecting any meaningful change.

As noted above, the stated purpose of the Board of Executives is to "preserve the engagement of the broker-dealer community and listed company community." According to the proposed constitution, the power of the Board of Executives in the oversight realm is limited to making recommendations to the Board of Directors, the body ultimately charged with responsibility for oversight. With the exception of this proposed "public investor representative," the Board of Executives will be largely composed of member-firms and officials of companies listed on the Exchange. In other words, the scenario created by this most recent amendment is to place 1 "public investor representative" in a 20-25 member body which doesn't have any true regulatory oversight function and consists almost entirely of representatives of the very institutions to be regulated. It does not take much imagination to envision how utterly meaningless the public investor representative's role will be in such a setting other than to provide the NYSE with the political cover of being "sensitive to the interests of the public investor."

The Mechanism For Nominating and Electing Board Members Weighs Heavily Against the Nomination or Election of Directors Who Are Truly Representative of the Public Investor or Committed to Stringent Regulatory Oversight

Another of PIABA's major concerns is the mechanism for nominating and electing Board members going forward. As PIABA understands the proposal, all candidates for the "independent" Board of Directors will be nominated only by the Board itself or by petition signed by at least 40 voting members of the NYSE. This structure ignores political and corporate realities and all but guarantees that no one who exhibits any degree of regulatory

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zeal will ever be nominated or elected to serve on the Board - a result seemingly inconsistent with the notion of creating an "independent and robust" oversight body responsive to the needs and concerns of the average public investor.

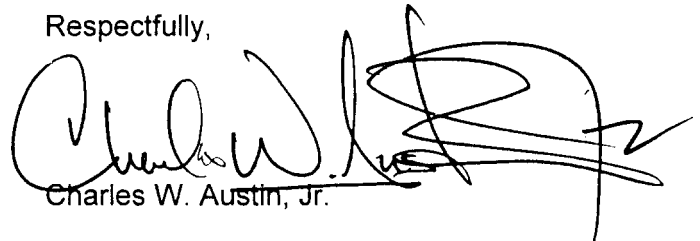
PIABA suggests that the SEC and the North American Securities Administrators Association each fill one of the **Board** (as opposed to "Board of Executives") seats each year, regardless of whether the NYSE membership agrees with those appointments, and that those appointments consist of individuals with backgrounds evidencing an understanding of the regulation of the securities industry. Such mandatory appointments by these outside bodies would serve to ensure that at least some members of the Board are truly independent, possess the qualifications to fully appreciate the effect on the investing public of actions taken by NYSE member firms, and create a perception among the investing public that real changes in the realm of oversight and enforcement are being effected.

Conclusion

PIABA hopes that this letter is taken in the good-faith vein in which it was intended. Contrary to the concerns expressed by Mr. Reed during his testimony before the Senate Banking Committee, the comments herein are not merely an attempt to advance an alternative agenda during a time when the NYSE has "lost its voice." Indeed, it could be argued that the NYSE abandoned or sold "its voice" when it lost sight of the individual public investor upon whom the Exchange and its members rely and to whom the Exchange and its members owe a duty of the highest order. It is PIABA's hope that the SEC will use this historic opportunity to ensure that such a loss of sight and voice will never occur again.

Please don't hesitate to contact me at 804-379-3590 with any questions or comments.

Respectfully,



Charles W. Austin, Jr.

CWAjr:mmi

cc: Hon. Richard C. Shelby
Hon. Paul S. Sarbanes
Hon. Michael G. Oxley
Hon. Barney Frank

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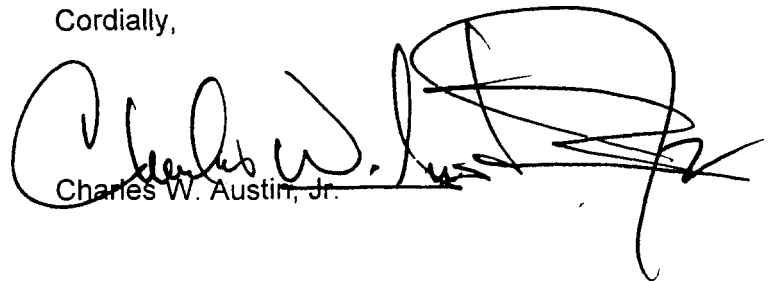
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Dear Mr. Katz:

Enclosed please find six (6) copies of the comments of the Public Investors Arbitration Bar Association to the above-referenced Release.

Please don't hesitate to contact me with any questions or comments.

Cordially,



Charles W. Austin, Jr.

CWAjr:mmi
enclosures