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July 29, 2005

VIA FACSIMILE

Dan Beyda
Karen Kupersmith
New York Stock Exchange
Arbitration Department
20 Broad Street, 5th Floor
New York, New York 10005

Re: Classifications of Arbitrators

Dear Dan and Karen:

The Public Investors Arbitration Bar Association ("PIABA"),[1] writes this letter in an attempt to enlist your support in our efforts to insure that the classifications of arbitrators (between public and securities industry) at the New York Stock Exchange, Inc. ("NYSE") will promote the highest level of investor confidence in the arbitration process.

In accordance with the current rules of the NYSE, in all arbitration matters involving public customers and member firms, if the amount in controversy exceeds the sum of $25,000, there is a requirement that an arbitration panel be appointed which consists of three (3) arbitrators, at least a majority of which shall not be from the securities industry unless the public customer should direct otherwise. [*See, e.g.,* Exchange Rule 607(a)(1)]

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[1]/ The Public Investors Arbitration Bar Association ("PIABA"), established in 1990, is an international bar association which consists of more than 740 attorneys. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process; making securities and commodities arbitration as just and fair as systematically possible; and creating a level playing field for the public investor in all securities and commodities arbitration forums.

Public Investors Arbitration Bar Association
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Notwithstanding the preceding requirement, an increasing number of PIABA members have expressed their concerns that a substantial number of arbitrators, who are currently classified by the NYSE as public arbitrators, have significant direct and/or indirect affiliations with the securities industry and, accordingly, should more properly be reclassified as industry arbitrators.

The best illustration of this perceived problem is the increasing number of "defense" attorneys who are being assigned to serve on arbitration panels under the guise of the public arbitrator classification.

While we do not attribute the experience of our members to any bad intentions on either the part of your staff or otherwise, it is clear that both the applicable Exchange Rules and the associated Guidelines for Classification of Arbitrators have contributed to this problem, and compounded the erosion of investor confidence in the arbitration process.

We would, accordingly, request your immediate consideration of the following proposed revisions to the applicable arbitrator classification provisions:

• Exchange Rule 607(a)(2)(iv): We request that this section be amended to state that an arbitrator will be deemed as being from the securities industry if he or she "is an attorney, accountant or other professional who has provided any representation or services to any securities industry client, at any time, within the preceding five (5) year period of time."

The proposed amended language would more properly reflect the desired complete accuracy of the definition of the applicable arbitrator classification and would also have the following benefits:

1. It would eliminate the continuing audit and/or enforcement responsibilities of your staff in connection with the existing "twenty (20) percent or more of his or her professional work effort" limitation for the applicable individuals;

2. It would eliminate the discrepancies that naturally have occurred as a direct result of the absence of any definition for the term "work effort" in the current rule;

3. It would, through the utilization of a five (5) year period of time, provide consistency with the other limitations in the same Exchange Rule, [*see, e.g.,* Exchange Rule 607(a)(2)(ii)], as well as the applicable portion of the NYSE Arbitrator/Mediator Profile Form. [*See, e.g.,* Arbitrator/Mediator Profile Form, Question 3(b)]; and

4. Perhaps of greatest importance, it would go far in insuring the NYSE's stated objective that "public arbitrators must be free, both in fact and appearance, of close ties with the securities industry." [*See, e.g.*, Guidelines for Arbitrator/ Mediator Profile Form, Question 1].

• <u>Exchange Rule 607(a)(3)(i)</u>: We would request that this section be amended to state an arbitrator will not be deemed a public arbitrator if "he or she has an immediate family member who is a person who would be deemed as being from the securities industry in accordance with subsection (a)(2) of this rule."

It is our belief that the proposed amended language in this provision more properly reflects the desired accuracy of the definition of the arbitrator classification and would have the following benefits:

1. It would, through the recognition of the potential conflicts of interest that may be associated with immediate family members, provide consistency with the other similar limitations for securities industry family members in the same Exchange Rule. [*See, e.g.,* Exchange Rule 607(a)(3)]; and

2. Perhaps of greatest importance, it would comport with the NYSE's stated objective of insuring that "public arbitrators must be free, both in fact and appearance, of close ties with the securities industry." [*See, e.g.,* Guidelines for Arbitrator/ Mediator Profile Form, Question 1].

• Exchange Rule 607(a)(2)(vi): We request that this new section be adopted to state that an arbitrator will be deemed as being from the securities industry if he or she "is an attorney, accountant or other professional whose firm and/or employer has provided any representation or services to any securities industry client, at any time, within the preceding five (5) year period of time."

The proposed amended language in this provision would more properly reflect the desired accuracy of the definition of the applicable arbitrator classification and would also have the following benefits:

1. It would eliminate the continuing audit and/or enforcement responsibilities of your staff in connection with the existing "close securities industry ties" or "routinely represent industry firms or individuals" limitations for the firms of the applicable individuals which are currently set forth in the Guidelines for Classifications of Arbitrators. [*See, e.g.,* Guidelines for Classifications of Arbitrators, Item 5];

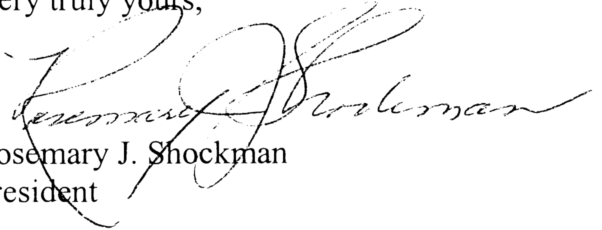
2. It would eliminate the discrepancies that naturally have occurred as a direct result of the absence of any definition for the terms "close securities industry ties" or "routinely represent industry firms or individuals" for the firms of the applicable individuals which are currently set forth in the Guidelines for Classifications of Arbitrators. [*See, e.g.,* Guidelines for Classifications of Arbitrators, Item 5]; and

3. Perhaps of greatest importance, it would go far in accomplishing the NYSE's stated objective of insuring that "public arbitrators must be free, both in fact and appearance, of close ties with the securities industry." [*See, e.g.,* Guidelines for Arbitrator/Mediator Profile Form, Question 1].

For all of the reasons set forth above, and to promote the highest level of investor confidence in the arbitration process, PIABA would request that the New York Stock Exchange, Inc. immediately consider

our comments for the proposed modifications of arbitrator classification.

Very truly yours,



Rosemary J. Shockman
President

RJS:dlr