My name is Rosemary Shockman. I have been representing public investors in cases against securities broker-dealers for 23 years.

I am president of the Public Investors Arbitration Bar Association. PIABA is an international bar association of more than 750 lawyers representing investors in securities arbitrations. PIABA is dedicated to creating a level playing field for public investors in securities arbitration.

We appreciate the opportunity to share with the committee some of the most pressing issues surrounding securities arbitration. Let me begin with what we believe is the most important issue to help level the playing field for aggrieved investors: the elimination of the mandatory industry arbitrator on panels hearing cases.

Elimination of the Industry Arbitrator

Arbitration cases are heard by three-member panels. One of the panelists is currently required to be an industry arbitrator, a member of the securities industry. The remaining two panelists are public, although they may also have spent part of their career in the securities industry.

Problem Number One with the Industry Arbitrator: The public investor bringing his case is faced with a panel that appears to be stacked against him. Bias and impropriety is perceived by the aggrieved investor before the first word is spoken.

Problem Number Two with the Industry Arbitrator: Industry arbitrators tend to sanction industry practices that have become institutionalized and apply those standards rather than the practices mandated by the NASD, the SEC, the NYSE, and the states. Revelation of cases involving industry-wide wrongful

conduct highlights the importance of taking away the mandatory industry arbitrator.

A telling example arises in the wrongful sale of fee-laden variable annuities to retirees. The NASD, SEC, NASAA and numerous financial writers have condemned the over-sale of variable annuities, despite them being sold by most of the major broker-dealers. Yet, the investor is often forced to have his claim for unsuitable sale of variable annuities heard by an arbitrator whose employer is reaping massive profits from the sale of variable annuities to the same type of clients.

The industry will tell you that an industry arbitrator is needed so that someone on the panel will have knowledge of the securities industry, an "expert witness" on the panel.

If this rationale ever had any basis in fact, it has evaporated over the years. Arbitration has become an increasingly sophisticated process. Where arbitration was once selected on a voluntary basis by investors seeking to handle simple disputes, which could be heard by panels in a day or two, the advent of mandatory arbitration moved all customer grievances to arbitration. Cases are typically presented by lawyers and last several days. The use of retained expert witnesses to present industry practices, procedures and rules to the panels is typical.

Congress should urge the SEC to move forward to adopt rules eliminating the requirement of an industry arbitrator.

The NYSE and the NASD Have Definitions of Public Arbitrators Which Are Far Too Broad and Include Persons with Ties to the Securities Industry.

The definitions of public arbitrators used by the NASD and NYSE permit people to serve as public arbitrators who often look a lot like industry arbitrators. Some of these "public arbitrators" have been involved in the securities industry for years, such as lawyers who represent securities industry clients.

The definitions of public arbitrators need to be much tighter, and to exclude persons with ties to the securities industry.

Discovery Abuses

Securities arbitration is alternative dispute resolution. It should provide a cheaper, quicker way to resolve disputes than court. The securities arbitration rules are more streamlined than court -- no depositions or long interrogatories. Discovery is typically limited to document requests.

However, broker-dealers have used evasion and abuse to subvert the streamlined process. They regularly resist document production, what is a low-risk tactic for them. If they get slapped on the hand and have to pay a fine, they still come out ahead by failing to produce evidence in the majority of cases.

Unpaid Arbitration Awards

Millions of dollars of arbitration awards go unpaid, typically against small broker-dealers. The firm engages in fraud, then simply goes out of business when investors start to bring claims. The widowed mother in law of a prominent member of this Congress came to me as a potential client after she had been

defrauded of her life savings by one of these small broker dealers. I had the sad task of telling her she had a strong case, but we would probably not be able to collect.

Public investors are shocked to hear that these broker-dealers are not required to have insurance, and have very small net capital requirements.

Problems at the NYSE

The primary alternative forum to the NASD is the NYSE. Practitioners brought a substantial number of their cases to the Exchange for years. But, many of them have become so frustrated with the delays at the Exchange, that they have simply stopped bringing cases there. Thus, investors are effectively deprived of even the limited choice of industry run forums that now exist. PIABA stands ready to work with the NYSE to try and resolve the issues that have created this situation. The NYSE has communicated its willingness to work on these problems with us.

Conclusion

The Board of Directors of PIABA is most appreciative of your interest in taking a closer look at securities arbitration and we would be happy to assist you in any way we can. I'll be glad to answer any questions the committee members might have. Thank you.