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American
Stock Exchange

The Honorable Edward J. Markey
Chairman, House Subcommittee on
Telecommunications and Finance
2133 Rayburn House Office Building
Washington, D.C. 20515

August 18, 1987

Dear Congressman Markey:

In Arthur Levitt's absence, I have been asked to respond to your letter of July 29, 1987 in which you request information about the arbitration process at the American Stock Exchange.

The Amex Constitution requires Amex members to resolve all disputes through arbitration. The Amex, therefore, provides a forum for the arbitration of disputes among members as well as disputes between members and their customers. Our role as compared to the NYSE and the NASD is small: Amex arbitrators currently handle approximately 80-85 cases per year. For the years 1985-1986, the number of cases resolved through Amex arbitration represented only 3% of the aggregate resolved through the arbitration facilities of the NYSE, the NASD and the Amex.

Arbitrations at the Amex are governed by the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration (SICA) and adopted in 1979 and 1980. SICA is composed of ten self-regulatory organizations (SROs), including the Amex, Boston, Pacific, Cincinnati, Midwest, New York and Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, and the National Association of Securities Dealers. Four representatives of the public and one from the Securities Industry Association also participate in SICA. SICA meets at least twice yearly to review the arbitration procedures and ensure that the Code by which it is governed continues to effectively meet the needs of all involved in the process. All of the SROs belonging to SICA have adopted the Code, and their individual codifications of it are, for the most part, identical. All amendments to the Code, and to SRO rules, are filed with and approved by the SEC.

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The Uniform Code as reflected in the Amex rules includes procedures for commencing an arbitration, selecting panelists, challenging a panel member and rendering an award. As in any arbitration, the decision of the arbitrators is final and is subject to court review only on a very limited basis.

The Amex Hearings Department administers both member and customer arbitrations. It is staffed by a Director, Assistant Director, manager and secretary. The Director of Hearings selects arbitrators for particular matters from a roster composed of industry and public members which is reviewed and approved by the Exchange's chairman on an annual basis. Each party to an arbitration has the right to one peremptory challenge and unlimited challenges for cause. The backgrounds and affiliations of arbitrators are made available to the parties so that they can make an educated evaluation of possible conflicts, and the arbitrators are themselves instructed that they must disclose any potential conflicts of which they are aware prior to being empaneled. Our rules provide that all panels assigned to customer versus member controversies be composed of a majority of arbitrators from the general public. As is true of the rosters of other SROs, the "public" arbitrators often are lawyers, accountants, bankers, academics, or other professionals. Often these individuals were previously connected with the securities industry, or have current indirect connections by virtue of the fact that they provide services to broker-dealers. While the general knowledge of securities matters they may have developed in this manner in many ways contributes to the efficiency of the arbitration process, the desire to appoint individuals with expertise or familiarity with the subject matter can conflict with the need to have truly "public" arbitrators. We believe that careful selection of the roster can eliminate many of these concerns, and that knowledge of the securities industry has often worked to the benefit of customers. Nevertheless, SICA members are currently discussing new measures to assure neutrality.

Current Amex rules provide for voluntary cooperation between parties in the exchange of documents prior to a hearing. The parties are encouraged to produce witnesses and present proofs without resort to the issuance of subpoenas. However, if necessary, the arbitrators and counsel for the parties have full subpoena power as provided by law. Under consideration by SICA is a proposal which would establish a well-defined procedure governing document production. Under the proposal, a single member of the Arbitration

Panel could be appointed by the Director of Arbitration to decide all discovery requests and would be authorized to issue subpoenas or orders of production and impose deadlines for compliance.

To make the arbitration process as convenient and cost-efficient for the public investor as possible, the Exchange attempts to accommodate public customers outside the New York metropolitan area. When an arbitration is filed by an out-of-town investor, the individual may request that the hearing be conducted at a location more convenient than our New York office, where hearings involving individuals from the tri-state area, and all hearings in member versus member cases, are conducted. We permit arbitrations to be conducted in at least one major city in most states. The only criteria we attach to requests for such hearings is that the subject matter have a direct nexus to the Amex; i.e., that it involves a member of the Amex and relates to an Amex-listed security. If either of these criteria is not met, we refer the claimant to the NYSE or NASD, which have similar programs for conducting arbitrations outside the New York area.

The average Amex arbitration is completed within seven to nine months. Cases brought by public customers most commonly involve issues of suitability, unauthorized trading, and churning. During 1985 and 1986, 89 arbitration cases involving allegations of churning or unsuitability were opened. Of these, 52 have been decided (30 were settled or withdrawn prior to hearing, and seven are pending), and 25 of these were decided in favor of the public investor. Over the same period of time, of the awards rendered in favor of the public, 70% were for amounts equal to 50% or more of the claim (30% for the full amount sought), and 30% were for amounts totaling less than 50% of the claim. A similarly specific breakdown of arbitrations conducted between 1982 and 1984 is not readily available; however, of the 71 public customer cases decided during that period, 42 resulted in awards in favor of the public. Should you desire more detailed information on this time period, we would be pleased to furnish it to you, although it would require additional time. The Amex has not had any experience with class action arbitrations.

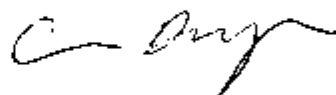
SICA is currently reviewing the arbitration procedures at the SROs in light of Shearson, with a particular emphasis on ensuring that SROs are responsive to customer needs and concerns. In this regard, a number of areas are being reviewed, and possible modifications are being considered. As I mentioned, consideration is being given to redefining the concept

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of "public arbitrators" to address concerns which now arise with regard to individuals who fall within the current definition despite having been directly involved in the industry in the relatively recent past, or who occasionally provide services to broker-dealers. In addition, SICA has proposed to establish an arbitrator profile which would provide a complete background of proposed arbitrators and would be available to parties. Also under consideration are proposals to enhance the training which new arbitrators receive, ensure that members of all arbitration panels are fully aware of possible conflicts to which they should be sensitive, provide all arbitrators with the Code of Ethics published by the American Arbitration Association, and increase public participation in the selection of individuals to serve on SRO arbitration rosters.

We appreciate the opportunity to respond to your concerns, and would be pleased to provide any further information that is required.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Dwyer".