

**Securities Industry Association**

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November 3, 1998

Margaret H. McFarland
Deputy Secretary
United States Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: Release No. 34-40524; File No. SR-NYSE 98-27
Proposed Rules Regarding Mediation of Disputes and
Various Procedural Matters

Dear Ms. McFarland:

The Securities Industry Association ("SIA")¹ appreciates the opportunity to comment on the above referenced Release which provides notice of the New York Stock Exchange's ("NYSE") intention to adopt amendments to Rules 600, 604, 608, 609, 611, 613, 621 and 627. The Release also references proposals to adopt new rules 638 and 639 requiring, among other things, pilot programs for mediation and/or administrative conferences with respect to cases involving claims of \$500,000 or more.

For the reasons set forth below, SIA strongly supports the proposed amendments and also, subject to certain qualifications and clarifications, supports the proposed new rules pertaining to mediation and administrative conferences.

I. OVERVIEW

The NYSE, SIA and other organizations have long participated in efforts by the Securities Industry Conference on Arbitration ("SICA") directed at improving the SRO arbitration process, as well as seeking greater rule uniformity among the SRO's that provide arbitration facilities. We believe that the instant proposals are consistent with those goals in that, among other things, they eliminate certain proceedings that cannot be effectively administered in arbitration and increase various notice requirements to better protect the rights of litigants. We also believe the proposals with regard to mediation and administrative conferences may contribute to the more efficient administration and resolution of larger cases.

II. PILOT PROGRAMS REGARDING MEDIATION AND ADMINISTRATIVE
CONFERENCES

SIA supports proposed Rule 638 to the extent it would encourage litigants in non-customer cases of \$500,000 or more, to participate in a mediation session. However, we strongly believe that, by its very nature, mediation should always be a voluntary process, regardless of whether a dispute is intra-industry or involves public customers. Thus, SIA opposes that portion of Rule 638 which would make a mediation session mandatory with respect to non-customer cases of \$500,000 or more.

SIA also supports proposed Rule 639 which, on a two-year pilot basis, would require an administrative conference to be held with respect to all arbitrations where the amount of claims is \$500,000 or more.

In addition, SIA respectfully requests that the final rules, adopting Release or accompanying Information Circular clarify that the mediation session or administrative conference provided for in Rules 638 and 639 respectively, be conducted via telephone at the request of any party. This would make the process more convenient, efficient and cost effective for out-of-town litigants, which is clearly among the principal reasons for offering mediation and administrative conferences in the first place.

III. CONCLUSION

SIA strongly supports the proposed amendments to NYSE Rules 600, 604, 608, 609, 611, 613, 621 and 627. SIA also supports adoption of Rule 638 provided its mediation provision is made voluntary, rather than mandatory. Finally, SIA requests that the final rules, adopting release or information circular relating to Rules 638 and 639 clarify that the mediation session or administrative conference provided for therein, be held via telephone at the request of a party.

We once again thank the Commission for the opportunity to comment. Any questions regarding the content of this letter may be directed to the undersigned or Michael Udoff, Vice President, Secretary and Associate General Counsel.

Very truly yours,

Stephen G. Sneeringer
Chairman, SIA Arbitration Committee

cc: The Honorable Arthur Levitt, Chairman, SEC
The Honorable Paul A. Carey, Commissioner, SEC
The Honorable Norman S. Johnson, Commissioner, SEC
The Honorable Isaac C. Hunt, Jr., Commissioner, SEC
The Honorable Laura S. Unger, Commissioner, SEC
James E. Buck, Senior Vice President and Secretary, NYSE
Robert Clemente, Director of Arbitration, NYSE
Linda D. Fienberg, Executive Vice President, NASD-R

Footnote:

¹ The Securities Industry Association brings together the shared interest of nearly 800 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members—including investment banks, broker-dealers, and mutual fund companies—are active

in all markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans and accounts for \$270 billion of revenues in the U.S. economy.