Subject: File No. SR-NASD-2006-088
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September 13, 2006

Our firm has represented the interests of individual investors in claims against the securities industry for many years. I am also the current Chair of the NASD's National Arbitration and Mediation Committee. The pending rule proposal has raised significant concerns in my mind about the arbitration process and it's abuse by Broker Dealers.

As you know, a brokerage firm customer is bound by language in every new account agreement to submit to arbitration for dispute resolution. Securities Arbitration was never designed to parallel court litigation. It was supposed to be a more efficient and less complicated forum that would allow aggrieved investors an opportunity to seek redress for the damages sustained through the wrongful conduct of stock brokers and their firms. This often involves the destruction of a portfolio representing a lifetime of hard work and savings. There was a time when hearings would last for a day or two and attorneys were not always necessary for a claimant to present his/her case.

Over the past 15 years we have witnessed a complete transmutation of this process. Discovery motion practice has been elevated to a constant and repeated battle to access documents, and it is unusual for a hearing to last less than 5 days. A public customer who now tries to represent themselves is faced with a full blown court like attack mounted by brokerage firm attorneys who specialize in the field. In fact, even claimants who hire lawyers not experienced in the nuances of Securities Arbitration are at a disadvantage.

Against this backdrop, the Motion to Dismiss language in the rule proposal is, at best, problematic. In just the last year, there has been an increase in the filing of Motions to Dismiss by brokerage firms. Although these motions generally fail, Broker Dealers persist in this practice in an attempt to intimidate investors. And who knows, every once in a while a panel will grant the motion. For a pro se claimant it can be the final outrage because these motions require skills and experience beyond the reach of even the most sophisticated investor. Even for customers represented by counsel, the response to a Motion to Dismiss is costly and aggravating. If the stated purpose of Securities Arbitration is to create a forum where a customer’s grievances can be aired, even the existence of a procedure which conceivably could deprive an investor of the opportunity to present their case to a panel is inappropriate.

In addition, none of the procedural safeguards that surround a Motion for Summary Judgment exist in arbitration. In court a party is provided with discovery tools such as depositions and interrogatories to uncover facts necessary to prove a case. In Securities Arbitration discovery is limited to a document request. In court the trier of the law is a trained jurist. In Securities Arbitration many panels do not even have one lawyer as a member. In court a losing party has the right of appeal. In Securities Arbitration the narrow grounds for a petition to vacate generally do not include review of the granting of a Motion to Dismiss.

I will concede that there are a few very unusual and extraordinary circumstances where a Motion to Dismiss might serve the interests of justice. For example, if a broker or firm who had nothing to do with the account at issue were to be named, an early resolution might be appropriate. However, any such procedure must be accompanied, not by examples which will only feed the litigation mill, but by comments that explicitly discourage the filing and granting of these motions coupled with the imposition of sanctions to penalize those who choose to ignore such guidelines.

Thanks you for the opportunity to comment and, of course, I remain available to discuss this further.