RUSSELL A. BADDERS
MARY JANE BASS
ELIZABETH C. CALLAHAN
JAMES S. CAMPBELL
J. NIXON DANIEL III
JOHN P. DANIEL
TERRIE L. DIDIER
THOMAS F. GONZALEZ
STEVEN R. GRIFFIN
DAVID E. HIGHTOWER
BRET M. KANIS
GARY B. LEUCHTMAN
JACK W. LURTON III
DAVID L. McGEE
WILLIAM H. MITCHEM
PETER J. MOUGEY
RALPH A. PETERSON
JOE SCARBOROUGH
JEFFREY A. STONE
DAVID B. TAYLOR III
RUSSELL F. VAN SICKLE
MATTHEW D. VINSON
JAMES M. WEBER
CHARLES T. WIGGINS
JOHN F. WINDHAM
JOHN R. ZOESCH III

BEGGS & LANE

A REGISTERED LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AND COUNSELLORS AT LAW
POST OFFICE BOX 12950
PENSACOLA, FLORIDA 32591-2950

501 COMMENDENCIA STREET
PENSACOLA, FLORIDA 32502
TELEPHONE (850) 432-2451
TELECOPIER (850) 469-3331

W. SPENCER MITCHEM
OF COUNSEL

E. DIXIE BEGGS
1909 – 2001

BERT H. LANE
1917 - 1981

April 10, 2008

VIA EMAIL TO: rule-comments@sec.gov
Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

Re: Proposed Revisions to Rules 12206 and 12504 of the NASD Code of Arbitration Procedure – Motions to Dismiss
File No. SR-FINRA-2007-021

Dear Ms. Morris:

FINRA's efforts on the above-referenced rule change concerning motions to dismiss in securities arbitration are a significant step in the right direction. I have represented hundreds of investor claims against brokerage firms. The arbitration process has become slower and more burdensome, which is due in large part to motions to dismiss. At one point, motions to dismiss were rare indeed. In securities arbitration today, however, a motion to dismiss is filed as a matter of course. In each and every case wherein a motion to dismiss was filed, I spent a significant amount of time defending unfounded motions attempting to import the inapplicable standards of class action litigation and other red herring defenses. FINRA's proposed rule change may not alleviate motions to dismiss altogether, but it drastically narrows the inherently unfair practice. The proposed rule change reflects FINRA's acknowledgement of the ongoing problems associated with motions to dismiss and will make drastic progress to curtail the number filed.

In addition to the burden motions to dismiss place on claimants, they are especially problematic in arbitration. Federal and state courts both provide a number of procedural rules and a long history of jurisprudence to prevent complaints from unfounded dismissal. Judges are required to rule on the basis of procedural rules and legal precedent. Furthermore, trial court errors can be corrected by appellate courts. Conversely, arbitrators are frequently not attorneys and do not have the necessary tools to rule on the technical procedural grounds of a motion to dismiss. For example, motions to dismiss are typically motions for summary judgment based on factual arguments. Of course, these "motions to dismiss" are filed before the claimants have had an opportunity to engage in meaningful discovery. If a complaint is dismissed on summary judgment in state or federal court it is only after the plaintiff has had the opportunity to fully discover and present the relevant evidence. This critical distinction between a motion to dismiss and a motion for summary judgment is something a non-lawyer arbitrator would not even identify let alone comprehend the significance. Furthermore, as opposed to state or federal court, in

arbitration there is no effective appellate review of unfounded rulings. This is profoundly unfair, but the proposed rule change addresses this issue by affording the claimants the similar right to participate in discovery and present their claims.

FINRA's proposal to shift forum fees and impose sanctions such as attorneys' fees and costs in cases of bad faith is an important component to this rule. Without any sanction the practice of "canned" motions to dismiss will continue. The proposal for sanctions will act as the catalyst to curtail the pattern of abusive motion practice. Without sanctions and the forum fee shift, the rule will lose significant weight.

The rule revisions that are the subject of this filing make significant steps to strike a balance between the rights of claimants to present evidence at a final hearing and the right of respondents to avoid frivolous or meritless arbitrations. While the proposed rule still fails to slam the door on motions to dismiss, it narrows the opportunities for the ongoing problems associated with unwarranted motions to dismiss. As a result, I support the current rule proposal as it is drafted and request that the approval be expedited.

Sincerely,

Peter J. Mougey
For the Firm

PJM/mll