

# DAYTON P. HAIGNEY

TEL: (212) 557-5590  
E-MAIL: DPHLAW@MSN.COM

ATTORNEY AT LAW  
THE LINCOLN BUILDING  
60 EAST 42<sup>ND</sup> STREET, SUITE 4700  
NEW YORK, NY 10165

OF COUNSEL:  
MARK R. CROSBY

10 April 2008

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-0609

Re: Proposed Revisions to Rules 12206 and 12504 of the NASD Code  
of Arbitration Procedure -Motions to Dismiss SR-FINRA-2007-021

Dear Ms. Morris:

I write this letter in support of the instant rule filing relating to pre-hearing motions to dismiss.

I have represented investors in arbitration since 1997. The S.E.C. should be concerned that securities arbitration has become increasingly unfair to individual investors. Arbitration forum fees exceed court fees by a large multiplier. More troubling, arbitration has become more akin to litigation in many respects.

Aggrieved investors have to fight the brokerage industry in virtually every arbitration to obtain discovery that should be turned over pursuant to the rules of the tribunal. Likewise, investors are not accorded the opportunity to conduct depositions. Nonetheless, the industry expects investors to respond to onerous motions to dismiss.

Although the prior rules technically did not provide for pre-hearing motions to dismiss, the defense bar commonly utilized motions to dismiss to harass claimants. While most of these motions were routinely denied, they took up valuable time of claimant's counsel and the panel members.

Likewise, the motions to dismiss served to poison the panels with respect to specious arguments.

The real danger of motions to dismiss involves the fact that investors do not possess any real rights to appeal a decision dismissing a claim.

The proposed rule, while not perfect, goes a long way towards removing this abusive tactic from the arsenal of the financial industry.

The S.E.C. should take a hard look at the fairness of the arbitration system under the FINRA rules. The S.E.C. should start its inquiry with serious consideration to removing the mandatory industry arbitrator requirement.

Thank you for your kind consideration herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Dayton P. Haigney, III", with a long horizontal flourish extending to the right.

Dayton P. Haigney, III