Comments of
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Ms. Nancy Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: SR-FINRA-2007-21

Dear Ms. Morris:

I have been practicing securities law for more than twenty years and have worn many hats - respondent's attorney, in-house compliance/defense attorney, NASD enforcement attorney and claimant's attorney. I have sat for and passed almost every brokerage exam that the brokerage industry offers and also serve as an arbitrator for FINRA I am very familiar with arbitration and the brokerage industry. I have a national and international securities arbitration practice with my base in Philadelphia, Pennsylvania.

I write this letter regarding the FINRA Motion to Dismiss proposal which as written I oppose. Claimant's traded in the right to a jury trial before their peers for what was to be an easy to maneuver arbitration system. Since I began handling securities arbitration matters more than twenty years ago, arbitration has become more and more complicated.

While there have been circumstances in which Motions to Dismiss were legitimate and served the purpose of weeding out cases that should not have come before arbitration panels, they have in recent years become standard practice for certain brokerage firms for every case regardless of its merit and such behavior should not be tolerated by FINRA.

I recall receiving a Motion to Dismiss on behalf of an elderly client who had a very legitimate case. The Motion to Dismiss was based on the Statement of Claim failing to attach such items as the brokerage firm's new account form (which the client never had) and that the paragraphs on the Statement of Claim were not numbered. The brokerage firm requested oral argument and

while the panel ultimately deemed the motion meritless and rightfully ordered the brokerage firm to pay for the forum costs of such motion, this elderly client had many sleepless nights worrying if his case would be dismissed prior to it ever being heard.

But at least up until now, these Motions were filed early on in the case to weed out cases in which there was a defect in the case based on the pleading[1] such as bringing an action against the wrong party, cases in which there was a Release, etc. The Motions to Dismiss that are brought at the beginning of the case give the Claimant the opportunity to amend the pleading to fix such defects.

I have great concern however as to the proposed rule which will allow for Motions to Dismiss being brought at the conclusion of Claimant's case. These Motions to Dismiss are in reality Motions for Directed Verdict. These type Motions are unusual even in court litigation. They will cause havoc in the FINRA arbitration system given that the outcome of such Motions depends upon such things as the laws and rules of the jurisdiction they are brought, cause of action and evidentiary rules, none of which are defined nor necessarily apply in FINRA arbitration.

The comments of the SEC indicate that these Motions filed at the conclusion of Claimant's case may be based upon any theory of law-this will make such Motions even more complicated for arbitration panels who are not equipped to handle such. This is a much different type of Motion than we have dealt with before in FINRA arbitration. They are not limited to defects in the pleadings because at this stage in the arbitration, the Respondent's would have already filed Motions to address such pleading stage defects.

Not all FINRA arbitration panels have arbitrators with the knowledge to deal with such type of motion practice. FINRA arbitrators are generally not trained to handle such arguments and they should not be instructed by FINRA that they should do so. Statistically few cases in court are closed based on a directed verdict because a judge will understand all the hoops that must be

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[1]In Raymond James Financial, Inc's comments to this Motion to Dismiss rule, it used as an example a case which I filed (Mullin vs. Raymond James). In this case due to eligibility issue time restraints, I filed a statement of claim (with one line of factual allegations) for tolling purposes which was shortly amended to include lengthy factual allegations. Raymond James used this as an example in their comment letter as a case which would have been outright dismissed by a panel (failing to mention in their comment letter that the statement of claim was amended and that what they claimed were overstated damages were in fact damages that were based on a 72T claim and as such net out of pocket damages would not necessarily have been the measure of damages). However under the present rules, had I not quickly filed an amended statement of claim, and had Raymond James filed a motion to dismiss, the panel would have ordered that the statement of claim be amended to include further factual allegations. It would not have simple dismissed the case as suggested by Raymond James.

jumped through for a party to be able to obtain a directed verdict-the vast majority of arbitrators will not be able to correctly deal with these sophisticated legal technicalities. This proposed Motion to Dismiss Rule has the potential to legitimize legal technicalities that would only be found in a court room in a manner that did not previously exist in FINRA arbitration and which is not equipped for such technicalities.

It is better to leave the issue as to Motions to Dismiss silent and let arbitrators formulate their own means to find justice for the parties than have rules put in place by FINRA which direct the panels to consider such Motions almost as one of the steps they must follow in the arbitration process prior to entering an Award.

Respectfully submitted,

Debra G. Speyer

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