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

Re: Proposed Revisions to Rules 12206, 12504, I3206 and 13504 of the FINRA Code of Arbitration Procedure-Motions to Dismiss SR-FW-2007-021

Dear Ms. Morris:

I am an attorney in private practice and have been representing investors in claims against brokerage firms for nearly 30 years. Prior to entering private practice I was assistant commissioner of the Oregon Securities Division and was responsible for enforcement of the Oregon securities laws, including those applying to broker-dealers.

Arbitration is supposed to be a fairly speedy and simple process. Instead it has morphed into a lengthy procedurally complex court-like proceeding primarily because of motions to dismiss filed by defense firms in their answers or thereafter. These motions to dismiss are rarely granted and deny Claimants their basic right to have their case heard by three arbitrators. Claimants do not have the kind of discovery available in court and have no opportunity to depose witnesses or obtain information by means of interrogatory. The arbitrators usually are not all attorneys and asking them to decide technical legal issues is inconsistent with the concept of arbitration.

Arbitrations are supposed to be fair, relatively informal, inexpensive equitable proceedings whereby Claimants exchange their right to a jury trial and significant opportunities to conduct discovery in exchange for a full hearing. Motions to dismiss are antithetical to that concept and serve only to delay hearings and increase expense to the investor.

The securities industry has uniformly inserted mandatory arbitration clauses in their new account agreements and if an investor wishes to participate in the securities market he or she must sign one of these contracts of adhesion. Having effectively denied investors their right to a jury of their peers and other significant discovery, the brokerage firms seek to have their cake and eat it too by bringing technical, legalistic motions to dismiss, generally before any significant discovery has been exchanged. Motions to dismiss following the completion of the exchange of discovery resemble motions for summary judgment. However, these types of motions to dismiss are inappropriate because there has been no opportunity to take depositions whereby claimants attorneys would ask the relevant witnesses whatever questions would be necessary to overcome or defeat motions to dismiss which are really motions for summary judgment.

When a respondent makes a "motion to dismiss," the motion nearly always presents issues of fact. Yet the claimant lacks the usual discovery record, which might be required to establish the need for an evidentiary hearing. This situation is magnified when panels, at the request of respondents, stay discovery until after the hearing on the motion to dismiss. Finally, there is neither a procedure for providing evidence in opposition to a motion to dismiss, nor an appeal mechanism if the motion is improperly granted. Quite simply, the entire concept of a dispositive motion should be anathema to the arbitration process.

In my view motions to dismiss should have no place in FINRA arbitrations. The proposed compromise rule may prove to be eyewash and not improve the process at all. Arbitration should be an equitable, speedy, inexpensive and fair resolution of investors claims without the procedural and technically legal arguments made in court.

Therefore, with reservations, I endorse the SECs proposed rule to forbid motions to dismiss, absent certain extraordinary circumstances, until after the Claimant completes his case in chief at the arbitration.

Very truly yours,

Richard M. Layne

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