March 20, 2008

Gentlemen:

This letter will comment on the proposed revisions to Rules 12206 and 12504 of the FINRA Arbitration Code ("The Code").

First some background on myself. I was an attorney in the Enforcement Division of the Commission from 1978 until 1980. Since 1980 I have been an attorney in private practice principally devoting my efforts to representing and advocating for public investors. Prior to the *McMahon* decision in 1987, I filed many investors' claims in arbitration with the NASD and NYSE on a voluntary basis. Since 1987, I and my clients have not had that option available to us.

The NASD and now FINRA have on many occasions attempted to define, refine and reform the unfortunate trend in arbitration to make it more "court-like". Nowhere have these efforts failed as miserably as in the area of "motion practice". The very idea of a motion being filed which, if granted, would terminate the arbitration proceeding prior to a hearing on <u>any grounds whatsoever</u> is totally antithetical to the arbitration process and concept. Compounding the problem is FINRA's proposal to recognize, legitimate, and reform so-called "motions to dismiss" while not granting similar recognition to motions for summary judgment, motions for judgment on the pleadings and other motions which could be granted in favor of Claimants as well as Respondents. If I represent an investor who has been sold an unregistered security by an unregistered broker, I would normally be entitled to summary judgment if the claim had been filed in court. There is no such procedure available under The Code as it currently is written. The proposed revisions to Rules 12206 and 12504 give "relief" to brokerage firms and other respondents while providing no corresponding relief to Claimants. This shows that the proposed rules, and indeed The Code as it presently exists, is unfair and biased against the investing public and in favor of the securities industry. The fact that The Code and the proposed revisions are suggested by FINRA, which by its charter should be concerned primarily with protecting the interests and rights of public investors, provides a shining example of why investors and investors' attorneys do not trust FINRA or the current arbitration process.

I urge the SEC to deny approval to the proposed FINRA rules and to encourage FINRA to adopt a rule which totally bans any motion in arbitration which would deny either Claimants or Respondents a full and fair hearing on the merits of any claim before the full arbitration panel.

Respectfully submitted this 20th day of March, 2008.

Steven J. Gard

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