Please accept these comments on the Securities and Exchange Commission's request for public comments regarding the proposed NASD dispositive motion rule found in SEC Release 34-54360.

My practice includes securities litigating and arbitration matters, usually representing Plaintiffs/Claimants. My primary concern with the proposed Rule is that it continues and institutionalizes a very disheartening and disquieting trend in arbitration, which makes the process more like litigation, to the great detriment of the public investor.

I additionally share the concerns of other commentators that those presenting such motions will always come up with a variety of arguments to support the assertion that their Motion to Dismiss involves "extraordinary circumstances," no matter how carefully drawn is the definition of what constitutes whose circumstances. While I applaud the provisions of the proposed rule that provide for monetary sanctions for improper motions, the reality is that such a prohibition will itself encourage additional and collateral proceedings if it is successfully invoked. Such changes further move us away from the goal of arbitration
-- to provide a process and forum for a fair, equitable, and cost-effective resolution of these disputes.

The Supreme's Court's approval of mandatory arbitration was, in large measure, premised upon a belief that arbitration would be adequate to vindicate rights under the provisions of the Securities Acts. Shearson/American Express Inc. V. McMahon, 482 U.S. 220 (1987). Those advocating the pre-hearing dismissal of cases want to use some of the procedures of litigation in a forum where it is particularly unfair and inappropriate to do so. Arbitration is often pursued by lay individuals, who are reasonably lead to believe they are participating in a process where an attorney is not required. Responding to a Motion to Dismiss is something that most lay people, and indeed, even some attorneys not familiar with this area of practice, are ill prepared to do. Additionally, lay arbitrators are often asked to make decisions on Motions to Dismiss that rest upon legal rules and principals about which they may have no familiarity. It is fundamentally unfair to interject into arbitration a procedure that was developed in litigation, and which, when used in litigation, has the benefits of full blown discovery procedures to test the legitimacy of such a motion, is evaluated by a decision-maker trained in the law, and whose decision is subject to appellate review to correct any misapplication of law.

If the industry insists that these cases be subject to mandatory arbitration, as a matter of public policy the parties should, in almost all instances, be afforded a full evidentiary hearing. Further, if the regulators believe it appropriate to turn mandatory arbitration into a litigation-like process, then at the public customer should be given the option of deciding whether to proceed in arbitration or in litigation.

Finally, it is my hope that the regulators will consider whether, as a matter of public policy, it is wise to continue down the path of turning arbitration into a litigation-like process, by formalizing pre-hearing procedural tactics such as a Motion to Dismiss. It seems to me

that such a path can do little to give the public confidence that arbitration procedures are indeed adequate to vindicate investor rights under the Securities Acts, as demanded by McMahon.

Robert C. Port, Esq.
Business and Securities Litigation

Cohen Goldstein Port & Gottlieb, LLP
990 Hammond Drive
Suite 990
Atlanta, Georgia 30328