

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Proposed NASD Rule 12504 - Dispositive Motions - SR-NASD-2006-088

Dear Ms Morris:

I am writing in opposition to the proposed NASD dispositive motion rule found in SEC Release 34-54360, dated August 24, 2006. I have represented both claimants and respondents in securities arbitration proceedings for many years, so this issue is of great interest to me.

The proposed rule is in inherent conflict with the role and purpose of securities arbitration. It is, in essence, an attempt to graft a lawsuit standard onto a set of procedures that lack the safeguards set by court rules, including the Federal Rules of Civil Procedure. Foremost among these is the lack of deposition discovery under NASD rules. Only if depositions are allowed is it reasonable to permit dispositive motions. Without access to deposition discovery, this new rule dramatically slants the deck in favor of respondents in NASD arbitration.

Please understand that I would do not believe that the NASD rules should be amended to permit depositions in the normal course if dispositive motions were not permitted. Both depositions and this rule are directly contrary to the goal of arbitration to be an efficient, inexpensive and speedy method to resolve securities disputes. But to allow one without the other is unfathomable, and will strip away any remaining fairness to public customers that remains in NASD arbitration.

Please do not view the inclusion of "extraordinary circumstances" in the proposed rule as any real limitation on these motions. If adopted, this rule will result in such motions being filed in 9 out of every 10 cases brought.

I urge the Commission to reject the NASD's proposed rule and to require in its place a rule prohibiting pre-hearing dispositive motions in NASD arbitration proceedings. A rule prohibiting dispositive motions is consistent with the goals of arbitration. Such a rule also is consistent with the NASD rules as they currently exist. It is not by accident that the NASD rules presently have no provision for dispositive motions. Indeed, the current rules provide that the arbitrators can dismiss a claim with prejudice only as a sanction for discovery abuse or by agreement of the parties. Rule 10305. The only reason that respondents even now file so many dispositive motions is because the NASD has failed to explicitly advised its arbitrators that they are not permitted under its own rules. Thus, it appears that the NASD's failure to enforce its own rules is now the excuse it is using to further undermine the rights of public customers by explicitly permitting dispositive motions.

Very truly yours,

Al Van Kampen

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