VIA E-MAIL TO _RULE-COMMENTS@SEC.GOV_ (mailto:RULE-COMMENTS@SEC.GOV)

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

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

Dear Ms. Morris:

I oppose the NASD's proposal to adopt rules providing for dispositive motions in arbitration.

In order to preserve the fairness of arbitration, it is essential that investors be assured that they will have a full hearing to present their claims. Investors do not have the court advantages of full discovery to provide factual support for their claims prior to hearing, including such basics as depositions, interrogatories, and requests for admissions. Nor do investors have the court-granted right to appeal motions to dismiss erroneously decided by arbitrators. Even obvious errors of law by arbitrators are not subject to appeal. The only remedy for an investor whose case is dismissed on motion is to seek to vacate the decision, and courts routinely deny investors' vacatur petitions because they cannot establish the narrow grounds available for vacatur under the Federal Arbitration Act, nor can they meet the stringent standard for showing manifest disregard of the law.

The prospect for arbitrators erroneously granting motions to dismiss is great because arbitrators are not judges and, therefore, do not have research clerks. They are not even trial lawyers. Most arbitrators are businessmen, professionals, or business lawyers and have no experience in litigation.

Motions to dismiss are filed almost exclusively by the industry; and therefore, allowing motions to dismiss in arbitration gives the industry an unfair advantage over investors. This is particularly true since the industry forces investors into arbitration, and now the NASD seeks to give the industry procedural advantages available in court.

Motions to dismiss should be addressed only after claimants have submitted their case to the arbitrators in full so that the arbitrators have a true understanding of the matter before them, and not just lawyer arguments.

Even if motions to dismiss which deny a hearing are approved by the SEC, it is essential that investors receive at least some protection from erroneous decisions. It is therefore proposed that to the extent motions to dismiss are to be allowed, they should not be considered where there are material questions of fact, nor should they be used to dismiss

cases on the pleadings. Further, since there is no appeal, arbitrators granting such motions must be required to provide a reasoned opinion which then must be subject to review by the Director of Arbitration. And investors should be awarded attorneys' fees when a motion to dismiss is denied.

The SEC should, however, recognize that motions to dismiss which deny investors a hearing are fundamentally inconsistent with arbitration, and the proposed NASD rule should be rejected.

Very truly yours,

VAL HORNSTEIN
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