VAN DEUSEN & WAGNER, LLC

ATTORNEYS AT LAW
1610 THE HANNA BUILDING
1422 EUCLID AVENUE
CLEVELAND, OHIO 44115-2001

PHONE: (216) 781-4000 FAX: (216) 781-5666

October 3, 2006

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

RE: Proposed Rule: SR-NASD-2006-088

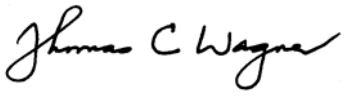
Dear Ms. Morris:

I have engaged in a securities practice principally in the NASD and NYSE forums for approximately 18 years. I am also an experienced arbitrator in the same forums. During this time I have experienced a steady erosion of the fundamental principals that form the basis of the arbitration process. Specifically, I believe the introduction of "motion practice" into the arbitration process not only increases the average expense and time commitment required of a single arbitration case (which necessarily impacts smaller investor cases disproportionately) but also threatens the fundamental due process safeguards of this forum.

The consideration and granting of a "motion to dismiss" in the arbitration process cannot be considered in the context of state or federal Rules of Civil Procedure. There is virtually no realistic opportunity to reverse an erroneously granted "motion to dismiss" in the arbitration forum, as compared to state or federal court. Motions to dismiss are now commonly filed as part of Respondents' Answer and are most often decided upon well before the completion of discovery. Oral arguments are <u>always</u> conducted over the phone and there is no opportunity for panel members to weigh the credibility of an allegation, document or witness in person. Any consideration of a "motion to dismiss" based on a statute of limitations argument and before a full hearing on the merits of the case requires a panel to consider (knowingly or otherwise) issues of fact often very much in dispute; "When were recommendations made?" "When should Claimant have reasonably discovered his account was over concentrated?" "Was the instrument in question a security or not?" Moreover, panels under these circumstances are also required to consider fundamental legal issues such as whether a particular statute of limitation for a legal action is applicable for an arbitration proceeding.

Dispositive motions erroneously granted in civil or federal case have the realistic opportunity of de novo review and reversal. Erroneously granted motions to dismiss in arbitration practice have no such mechanism and until they do, such motions should only be granted under the most extreme, extraordinary circumstances and should be highly discouraged, if permitted at all.

Sincerely,



Thomas C. Wagner

TCW/car

cc: Robin S. Ringo - rsringo@piaba.org