Woska& Hayes, LLP
OKLAHOMA CITY • HOUSTON

2618 First National Center 120 N. Robinson Oklahoma City, OK 73102
Phone: 405-235-1401 Fax: 405-235-1052 Toll Free: 1-800-935-1401

www.woskahayes.com

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September 25, 2006

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:

On behalf of the hundreds of clients I have represented in securities arbitration cases since 1987, may I please respond to the proposed Dispositive Motion Rule found at SEC Release 34-54360 (August 24, 2006). My clients have never had occasion to initiate a Motion to Dismiss except in Response to a Motion to Dismiss by Respondents. How does your rule, in any way, help the public customer? I suggest, respectfully, this Rule is a colossal blunder which may ultimately cause the NASD arbitration rules to be found wanting of due process and therefore unconstitutional.

It is quite clear to my clients in almost 100% of their securities arbitration cases, that the NASD or NYSE securities arbitration process is not working for the poor, middle class or even wealthy investor. The arbitrators, some of whom truly try to do the right thing, are thinly, and often ill equipped, to handle "any" serious legal issues presented at arbitration hearings, much less in Motions to Dismiss. The reasons are obvious, but let me suggest a few reasons this is not going to work for arbitrators:

1. They are paid small dollars to volunteer for difficult duty;

2. They are not paid to study and research the law;

3. Usually 2 of the 3 arbitration members are not lawyers and clearly "cannot" conduct any serious or meaningful review of the law;

4. The arbitrators have no clerks to research issues;

5. The arbitrators have no computers or computer assisted research available to them for legal issues and will have to take as true, what is in briefs;

6. Dispositive Motions (or Motions for Summary Judgment) in state and federal court are complicated and legally challenging for a judge as they typically involve multiple issues of fact and law to be analyzed;

7. Dispositive Motions are frowned on by state and federal court because Dismissals or Judgments on Dispositive Motions are equivalent to forfeitures of due process which are abhorred by courts;

8. There is no legal, rational or logical basis for appeal if a Dispositive Motion is entered against an investor for incorrect or improper reasoning thus denying investors even minimal due process of law under the United States Constitutions 5th and 14th amendments;

9. The use of Dispositive Motions inures to the clear benefit of the brokerage industry as their hourly rate attorneys who can churn out briefs non-stop while most investors have lawyers who are on a contingency fee and unpaid for complex and lengthy Motion practice;

10. The brokerage houses will statistically speaking, utilize Dispositive Motions to get rid of more cases by insisting, often incorrectly, that the law demands a dismissal; and,

11. The attorneys for brokerage houses have no stare decisis on arbitration awards and may therefore bend or misstate the law in order to prevail on their motions while the panel is typically unable to understand the subtle issues presented.

The investing public is absolutely fed up, in my experience, with what they believe are heavy handed, unfair, and biased arbitrators and an inept arbitration system. By arming panels with Dispositive Motions you are arming non-lawyers to make law. The tragedy surely, is that the SEC and NASD think this is a good thing and yet this hurts only one group, the investors you are sworn to protect.

There is absolutely no need for Dispositive Motions. There is, however, a continuing need for sincere arbitrators, trained in securities law issues, who can rule properly in arbitration hearings.

Very truly yours,

A. Daniel Woska

A. Daniel Woska
For the Firm

ADW/ljv