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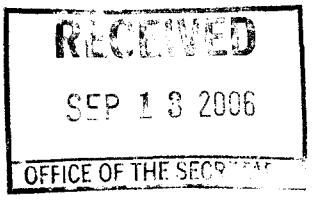

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: NASD Proposed Rule Change on Dispositive Motions
File Number SR-MSRB-2006-06

Dear Ms. Morris:

I have been an attorney practicing in self-regulatory arbitrations before the NASD and NYSE since 1983. I am submitting this comment to the NASD's proposed rule change related to a new rule that would allow arbitrators to decide dispositive motions (hereinafter referred to as the "Dispositive Motion Rule").

I believe the proposed Dispositive Motion Rule is not necessary. However, if the Commission does decide to allow this rule change, I implore the Commission to modify the text of the rule to specifically limit such motion practice to certain enumerated circumstances. As currently proposed, the Dispositive Motion Rule will result in attempts in every case for defense counsel to argue that claims do not meet the legal standard required to grant relief. Therefore, the arbitration forum will become less "user friendly" and more expensive for investors and employees of the broker-dealers to use.

A. The Dispositve Motion Rule is Not Necessary

The arbitration process has worked efficiently to date and there is no need to add more legal formalities to a process based on fairness and equitable considerations. The stated purpose of the Dispositive Motion Rule is to eliminate unnecessary lengthy hearings where there is an extraordinary circumstance that warrants dismissal of a claim based on such legal defenses as accord and satisfaction, settlement and release, and the running of the applicable statute of limitations.

Currently, if a party feels that such a legal defense is available, the party has the right to ask the Panel for a hearing where evidence of such a defense can be presented and reviewed. Exhibits (such as a release agreement) can be introduced in such a hearing. Each side will present their positions, and the Panel can decide the case. If the Respondent is confident that the legal defense is all that is necessary to present, the hearing can be very short with little difference in cost than if there is a motion.

B. The Proposed Text of the Rule is Vague and Will Lead to Filings Beyond Those Contemplated as Extraordinary Circumstances

As written, the proposed Dispositive Motion Rule will encourage filings by aggressive defense counsel. Defense counsel are paid on an hourly basis while many Claimants are either pro se or paid on a contingency basis. By allowing motion practice, the cost to Claimants will increase as more attorneys will require more funding to combat the likelihood of motion practice.

More importantly, as proposed, the Dispositive Motion Rule states that such a motion "may only be granted in extraordinary circumstances." Able defense counsel will argue that the lack of defining terms of what these "extraordinary circumstances" means that it is permissible to file any type of dispositive motion such as ones based on lack of standing, failure to state a claim for which relief can be granted, estoppel, waiver, lack of consideration, etc. This is not the intent of the rule but the failure to specify exactly what issues can be the subject of a dispositive motion will lead to an interpretation that all issues are fair under the right set of extraordinary circumstances. The issue of what is "extraordinary" will be subject to varying view points.

If the SEC believes such a rule to be necessary, I suggest that the rule specify precisely what type of dispositive motions are allowed. While my view is that such a rule is unnecessary, if the SEC is going to approve a Dispositive Motion Rule, the text should limit such motion practice to the following issues:

(1) Motion to Dismiss for Failure to File a Timely Claim

(2) Motion to Dismiss Based on a Prior Release

(3) Motion to Dismiss Based on Accord and Satisfaction

(4) Motion to Dismiss Due to Prior Governing Arbitration Award

The rule should specifically prohibit any dispositive motions based on either failing to state a claim for which relief can be granted or for any type of pleading deficiency or for summary judgment after the close of discovery.

Additionally, if a party makes a dispositive motion and loses, I believe the costs, including the prevailing party's costs in such a circumstance, should be paid by the moving party. In this way, there will be a financial deterrent to filing baseless motions to dismiss.

If you have any questions, please feel free to contact me.

Yours truly,

Kevin T. Hoffman

KTH:jtm