

Nancy M. Morris

Securities and Exchange Commission

100 F Street, NE

Washington, D.C. 20549-1090

Re: SR-NASD-2006-088

Proposed NASD Rule 12504-Dispositive Motions

Dear Ms. Morris:

I am a former Assistant Attorney General for the Investor Protection Unit of the New York State Attorney General's Office. I am also an attorney who primarily represents individual investors in arbitration within the NASD and NYSE forums but who has also represented brokerage firms and brokers in the past. In addition, I happen to be a member of PIABA and support its position with respect to this issue.

Such proposed Motion to Dismiss rule will no doubt lead to much injustice in the arbitration system. As you know there is a very limited right to appeal any such dismissal in arbitration even if such ruling was incorrect. Further, on many occasions Panel's do not even include an attorney and as such may easily be misled by inaccurate counsel arguments such as citations to inapplicable case law which happens again and again. Further, time and again, firms attach to such Motions select items of discovery - their best evidence in a case - knowing that the Claimant has yet to be provided discovery to counter or even review such arguments, because such Motions are also used as a tool to delay the production of damaging discovery. Often times after such motions have been denied and discovery finally obtained one is given documents which directly contradict and call into question the documents utilized in such firm's original Motion to Dismiss submitted with the aim of influencing a non-lawyer Panel into prematurely believing that the the investor has no true claim. We have no doubt that the new rule will further encourage such behavior, let alone continue to delay proper discovery which contradicts Notice to Members 99-90 and more recent NASD dictates encouraging the expeditious nature of discovery. Referring to Statutes of Limitations would also confuse arbitrators as Rule 10314(a) does not have any pleading requirements or references to formal causes of action unlike in Court. As such, references to statutes of limitations (unless a specific statute is referenced in a claim) misleads the Panel into thinking that one can "read into" a Statement of Claim and cherry pick Causes of Action which have

short statutes. Further, Statutes of Limitations and tolling law is much too complicated for panels to apply, especially pre-discovery and pre-hearing which discovery/hearing very well may document tolling issues which would directly impact any applicable statute of limitations.

In short, the proposed rule is a mistake and the NASD should require a full in-person evidentiary hearing for each claim unless it would be impossible for the Claimant to prevail -- a similar standard to that which is now being applied to expungement of broker's CRD records.

Very truly yours,
Stuart Meissner Esq.

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