Subject: File No. SR-FINRA-2007-021
From: Robert A. Uhl, Esq.

March 25, 2008

I hereby comment on the above-referenced rule change concerning motions to dismiss in FINRA arbitrations.

I have been representing investors in claims against brokerage firms for more than 20 years. During this time I have witnessed a transformation of what used to be a fairly speedy and simple process into a lengthy procedurally complex court-like proceeding primarily because of motions to dismiss filed by defense firms in their answers or thereafter. These motions to dismiss, when part of the answer, or when filed thereafter, deny Claimants their basic right to have their case heard by three arbitrators, who usually are not all attorneys. Moreover, arbitrations are designed to be fair and equitable proceedings whereby Claimants give up their right to a jury trial and other significant discovery including depositions which are not available in FINRA arbitrations absent extraordinary circumstances (*i.e.*, dying Claimants).

While the securities industry has imposed arbitration on investors by contract thereby denying them a right to a jury of their peers and other significant discovery, the brokerage firms then seek to unwind this Faustian bargain by bringing technical, legalistic motions to dismiss, generally before any significant discovery has been exchanged. When motions to dismiss follow the completion of the exchange of discovery they more resemble motions for summary judgment. However, these types of motions to dismiss are inappropriate because there has been no opportunity to take depositions whereby Claimants attorneys would ask the relevant witnesses whatever questions would be necessary to overcome or defeat motions to dismiss (which are really motions for summary judgment if brought after the exchange of discovery).

In short, while motions to dismiss should have no place in FINRA arbitrations, the compromise rule whereby they would only be permitted, absent extraordinary circumstances, at the conclusion of Claimants case in chief at the actual arbitration, is a welcome opportunity to have the FINRA arbitration process return to what it was initially designed to be, namely an equitable, speedy fair resolution of investors claims without the procedural and technically legal arguments made in court.

Therefore, I endorse the SECs proposed rule to forbid motions to dismiss, absent certain extraordinary circumstances, until after the Claimant completes his case in chief at the arbitration.