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Securities & Exchange Commission
Online Submission

Comment on File No. SR-FINRA-2007-021 Relating to Amendments to Code of Arbitration Procedure Addressing Motions to Dismiss

I am an attorney who has represented individual investors in arbitration for nearly 20 years. Living in South Florida I have had opportunity to represent thousands of individuals, the majority of whom are elderly and retired who are many times seeking recovery of a lost nest egg.

For many of these individuals the financial devastation to their lives is nearly too much to bear. Often times they are unable to meet normal living expenses and health costs. If unable to find support from friends and family they may be forced to sell their homes and go without needed medical treatment.

Victims like this need a forum in which they can receive fair and timely resolution of their case. A person in their 70's, 80's or older does not have the luxury of litigating their dispute for several years but needs an accelerated process. Arbitration was designed to fulfill this need and the proposal of any rule which makes the process more like a court proceeding is contrary to the intended purpose of arbitration.

Motions to dismiss have no place in arbitration. Arbitrators are often not qualified to assess and rule on the motion and there is little right of appeal.

Due to the expeditious nature of the arbitration proceeding, such motions are just not needed and only serve to provide the defense with a method that delays the resolution of the matter.

The Rules of Arbitration Procedure should remain as basic as possible to accomplish the equitable goal of arbitration. We should not lose sight of the following quote, by Domke on Aristotle, which is prominently included in the preface to The Arbitrator's Manual:

"Equity is justice in that it goes beyond the written law. And it is equitable to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the judge looks only to the law, and the reason why arbitrators were appointed was that equity might prevail."

The proposed rule will not serve to provide equity to aggrieved investors and will only make the arbitration process more "court like".

The proposed rule should be rejected.

Very Truly Yours

Dickenson Murphy Rex and Sloan

Robert H. Rex, Esq.