ulmer | berne | llp
ATTORNEYS

MICHAEL N. UNGAR

direct 216.583.7002
direct fax 216.583.7003
mungar@ulmer.com

KENNETH A. BRAVO

direct 216.583.7102
direct fax 216.583.7103
kbravo@ulmer.com

April 10, 2008

VIA E-MAIL (rules-comments@sec.gov)
AND REGULAR MAIL
Ms. Nancy Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File No. SR-FINRA-2007-021
Proposed Amendments to Rules 12206 and 12504 of the Customer Code and Rules 13206 and 13504 of the Industry Code Regarding Motions to Dismiss

Dear Ms. Morris:

We are writing to express our concern regarding certain aspects of the above-referenced rules, particularly as those rules affect cases filed by customers.

We have reviewed the correspondence dated April 7, 2008 from the Securities Industry and Financial Markets Association ("SIFMA") and are in complete agreement with their comments and suggestions.

By way of background, our firm has extensive experience in the defense of securities firms and registered representatives in arbitrations and related litigation brought by customers.

Although many of the cases which we handle would not be affected by the proposed Rules, a significant number would. When the attorneys in our law firm recommend to a client that a Motion to Dismiss is appropriate, we do so only after a careful review of all of the relevant and available information and careful research of the applicable law. Neither we nor our clients have any desire or intention to needlessly prolong litigation or to make it more expensive. We do, on the other hand, firmly believe that there are cases that are so deficient on their face that our clients should not have to bear the time and expense to have those cases go to a full arbitration hearing. Those cases should be reviewed by the panel pursuant to a Motion to Dismiss and, where appropriate, be dismissed.

Both the stated purpose, and the actual effect, of the proposed changes are to discourage "motions to decide a claim prior to the conclusion of a party's case in chief." The

proposed amendments, by requiring unanimous decisions, providing for the mandatory assessment of form fees (regardless of whether or not they are filed in good faith) if the motion is not successful, and encouraging motions for sanctions, only serve to reinforce a climate that disproportionately discourages such motions.

By way of example, we have seen a fair number of cases which, although filed within the six-year so-called "eligibility rule," are clearly time-barred by the applicable statute of limitations. To require respondents to go to the time and expense of a full blown arbitration hearing to establish that the claimants' claims are time-barred accomplishes nothing. Such cases should be able to be heard by the panel on a Motion to Dismiss and, where appropriate, be dismissed.

In a similar vein, we have seen a number of cases where the claimants use a "shotgun" approach, naming every individual and firm regardless of how remote that firm or individual's connection is to the underlying allegations. While we do not dispute the need to hold responsible any firm or individual whose conduct merits a finding of such responsibility, we again believe that it is unfair to require respondents to spend the time and money for a full blown hearing when a pre-hearing Motion to Dismiss gives the panel the opportunity to sort out and dismiss those against whom there is clearly no possible liability.

In closing, thank you for the opportunity to share our views with you. Should you or the Commission have any questions or desire any additional information, please feel free to contact either of us.

Very truly yours,

Michael N. Ungar

Kenneth A. Bravo

1700609v1
17999.00180