MORVILLO, ABRAMOWITZ, GRAND, IASON, ANELLO & BOHRER, P.C.

ELKAN ABRAMOWITZ
RICHARD F. ALBERT
ROBERT J. ANELLO
LAWRENCE S. BADER
BARRY A. BOHRER
CATHERINE M. FOTI
PAUL R. GRAND
LAWRENCE IASON
STEPHEN M. JURIS
ROBERT G. MORVILLO
BARBARA MOSES*
JODI MISHER PEIKIN
JONATHAN S. SACK**
EDWARD M. SPIRO
JEREMY H. TEMKIN
JOHN J. TIGUE, JR.
CYRUS R. VANCE, JR.
RICHARD D. WEINBERG

*ALSO ADMITTED IN CALIFORNIA AND WASHINGTON, D.C.
**ALSO ADMITTED IN CONNECTICUT

565 FIFTH AVENUE
NEW YORK, N.Y. 10017
TELEPHONE
(212) 856-9600
www.maglaw.com
FACSIMILE
(212) 856-9494

WRITER'S DIRECT DIAL

(212) 880-9520
ranello@maglaw.com

COUNSEL
JUDITH L. MOGUL
CHRISTOPHER J. MORVILLO
E. SCOTT MORVILLO
GREGORY MORVILLO

SENIOR ATTORNEY
THOMAS M. KEANE

MICHAEL C. SILBERBERG
1940-2002

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VIA E-MAIL
Ms. Nancy Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Morris:

I welcome this opportunity to comment on the rule proposals submitted to the Securities and Exchange Commission by the Financial Industry Regulatory Authority ("FINRA"). As an attorney who has represented member firms in numerous arbitration proceedings, I understand that arbitration seeks to promote the twin aims of cost effectiveness and expediency. In their current form, however, FINRA's proposed rules would have the opposite effect. The proposed rules promote claimants' interests in speedy arbitration hearings over respondents' interests in the prompt dismissal of frivolous arbitrations, instead forcing such respondents to waste tremendous amounts of time and resources defending against legally and procedurally deficient claims until the late date of a hearing on the merits. Moreover, the proposed rules may have the unintended effect of slowing arbitration proceedings because respondents will be forced to seek relief from the courts by moving for a stay of arbitration. FINRA's proposed rules should be rejected because they deprive respondents of their ability to attain early dismissals of baseless arbitrations and will unintentionally result in clogging the court system as respondents turn to judges to pursue their only remaining avenue of relief.

Under the proposed rules, a respondent may only file a pre-hearing motion to dismiss on the extremely limited grounds that: (1) the parties' claims have been settled; (2) the moving party "was not associated with the account(s), security(ies), or conduct at issue"; or (3) the claims at issue are not eligible for arbitration because they arose more than six years before the filing of the statement of claim. See FINRA Proposed Rule 12206, 13504(a)(6)(A)-(B). In all other cases, a motion to dismiss may only be filed after the conclusion of a claimant's case in chief. See FINRA Proposed Rule 13504(b).

I disagree with the proposed rules because I and other members of my firm have defended a large number of patently frivolous arbitrations in which dismissals appropriately were sought and attained at the outset of the arbitration. Early dismissals save the firm's clients' – often member firms – time and money, not to mention the resources of FINRA arbitrators and support staff. A respondent should not be forced to needlessly defend against frivolous claims, including during the discovery phase of the arbitration proceeding, until after the arbitration nears conclusion, as they would be forced to do under FINRA's proposed rules.

For example, in a recent arbitration in which I defended a member firm, the arbitration panel properly granted a pre-hearing motion to dismiss on the basis that the claimants had no applicable arbitration agreement with my client and/or that the claimants had failed to allege a single legally sufficient claim. Under the proposed rules, my client would have had no means of pursuing a dismissal of this baseless arbitration until essentially the conclusion of the arbitration. In other words, claimants that failed to fulfill the basic requirement of having an enforceable arbitration agreement nevertheless would have been able to force my client to defend itself through the hearing phase of the arbitration. Such a result would be absurd, not to mention that it would undermine arbitration's goals of cost efficiency and expediency.

Putting aside instances in which a respondent should be permitted to file a pre-hearing motion to dismiss in the absence of a valid arbitration agreement or on the basis of a claimant's legally unsupportable claims, numerous other reasons exist for allowing early dismissal motions, including that a prior action already is pending or that a claimant is legally incompetent to prosecute an arbitration statement of claim. Resolving dismissal motions on these grounds would not require an arbitration panel to weigh the merits of the arbitration, but, rather, would provide the necessary means for a respondent to seek relief from an arbitration proceeding that lacks any valid basis. The proposed rules would not, however, permit a pre-hearing dismissal motion on these bases.

Additionally, a respondent must be permitted to file motions to dismiss at the outset of arbitrations to resolve dispositive issues including that the arbitration is barred by the doctrine of res judicata or the applicable statute of limitations, or that a claimant has waived its right to arbitrate. The ability to seek an early dismissal of these types of procedurally-defective claims in arbitration is especially important given that courts routinely refuse to decide procedural issues,

instead shifting that responsibility to arbitration panels, and leaving a respondent in the frustrating position of having to litigate a legally-barred arbitration proceeding through the date of the hearing.

On a separate but related point, as noted, the needless expenditure of time and resources that would result from outlawing pre-hearing dismissal motions likely will drive respondents to the courts for relief. FINRA's proposed rules, therefore, may have the unintended effect of bombarding the court system with motions to stay arbitration as respondents' only alternative to needlessly expending resources through the hearing phase of arbitration.

FINRA's proposed rules seeking to forbid pre-hearing dismissal motions except in extremely limited circumstances should be rejected. The proposed rules needlessly will chill a respondent's ability to seek prompt relief from a meritless and/or legally barred arbitration statement of claim. Moreover, banning pre-hearing dismissal motions will result in overwhelming the court system with motions to stay arbitration, which will undermine arbitration's goals of cost efficiency and expediency.

Thank you for the opportunity to comment on the proposed rules concerning dismissal motions.

Very truly yours,

Robert J. Anello

RJA/ks