I write as both an NASD and NYSE arbitrator and as a lawyer who regularly represents investor-claimants in SRO arbitrations to express my concern re: the captioned proposed Rule as to Dispositive Motions.

While the proposed Rule does not in my view require amendments to its text, it should include its cautionary language that the application of the Rule is "discouraged" and that dismissal of claims should occur only in "extraordinary circumstances." The term "seldom warranted" might be used, as well.

The Rule as written should make clear that arbitrators should consider in every instance where a party invokes it that (1) its application is seldom warranted and (2) all presumptions are properly to be deemed against its application.

Dismissal of a party's claims without a full and final evidentiary hearing on the merits of those claims is in all but the most extreme cases contrary to the intent and purpose of the Rules. Arbitrators should ordinarily conduct a full evidentiary hearing concerning the merits of a party's claim. That hearing should include -- and the Arbitrators should duly consider -- all relevant and probative matters as to a party's claims.

The inclusion of this or similar language should help to preclude imprudent application of the Rule in its final form such as would result in inequitable and unjust dismissals of meritorious claims. Such a result is particularly abhorrent because the standards for judicial review of SRO awards effectively preclude review in the vast majority of cases. Thus, as the Commission may be aware, dismissal is tantamount to final adjudication. Ordinarily, when meritorious claims are imprudently dismissed a manifest injustice is the automatic result.

Thank you for accepting and considering my comments.

Respectfully,

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