I write as an attorney who has represented investors in hundreds and hundreds of NASD and NYSE arbitrations for well over a decade.

Motions to dismiss in arbitrations is, and has been a scary proposition for years. It is not atypical for respondents to move to dismiss claims before the actual hearing simply because their story is different than the claimants.

Each of these Motions to Dismiss are presented as if they are already had extraordinary circumstances.

The expense to investors in responding to the Motions can run into the thousands of dollars. A tough pill to swallow after already losing large sums of monies (and in some cases, life savings).

I just received an arbitrator selection list from the NASD for an upcoming case. While reviewing the arbitrators prior rulings, I saw three Motions to Dismiss that were granted.

From the defense side, these Motions appear to be an acceptable risk. A couple thousand dollars to get the job done and if successful, hundreds of thousands of dollars can be saved.

All of this when there is presently no rule allowing Motions to Dismiss.

With the proposed rule, such Motions would become more commonplace with every one having it's unique "extraordinary" circumstances -- even if those circumstances are simply a different version of the facts.

Motions to dismiss should be prohibited. If the SEC is unwilling to do so, at least give the investor stronger language than what is currently in the proposed rule or a requirement that if a party makes such a Motion and is unsuccessful, they need to pay the other sides attorneys fees in opposing the motion.

Arbitration is supposed to be a cost effective alternative to the court system. Such Motions only increase the cost and bring arbitrations closer to the expense and time expended as if the case were in court.

If the investor is giving up the right to have his/her case heard by a jury, at least give them a hearing.

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