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I am an attorney who has represented Claimants in securities arbitrations before the NASD/FINRA since 2003, and am a "Public" arbitrator on FINRA-DR's active arbitrator list. I am also a member of PIABA, but my comments should in no way be construed to speak on behalf of PIABA, or, o/b/o any other organization or entity.

I appreciate the hard work conducted by members of the NAMC to promulgate this amended Discovery Guide, however, I cannot support its ratification by the SEC.

The proposed new guide shall require Claimants to produce a far greater range of documents in discovery, and, it appears to reduce Respondents' discovery obligations. This is not equitable.

For instance, the proposed new guide deletes the requirement for Respondents to produce all documents reflecting supervision of the associated person and the customer accounts at issue (List 5, Item 2). Supervision - or, lack thereof - is often a key claim in arbitrations. In addition, while the proposed new guide requires Respondents to provide commission runs, the requisite period at issue is too short, only as little as 6 months (List 1, Item 20).

Notably, the proposed new guide's broad catch-all requirement for Claimants to produce all documents relating to all accounts and transactions with Respondents is quite vague and may require Claimants to locate and produce vast documents with little or no relevance (List 2, Item 5). In addition, the proposed new guide would require Claimants to locate and produce all correspondence of any kind about the accounts or transactions at issue (List 2, Item 9). Should a prospective Claimant with a meritorious claim be advised of these broad discovery obligations, the Claimant may be dissuaded from filing a claim. And, I am concerned that Claimants who are Trustees (List 2, Item 12) will be obligated to disclose private information about persons and entities not involved in their arbitration, and, who have not consented to such disclosure.

FINRA's proposes to amend the Discovery Guide to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest". I do not feel that the proposed new guide is consistent with FINRA's assertion. A detailed examination of the investor's financial background, interests, and acumen should be conducted at the INCEPTION of the account. Not under the capricious guidance of FINRA-DR in the course of discovery after the acts have transpired and the losses have been suffered.

For these reasons I oppose ratification of the proposed new Discovery Guide.

-Theodore M. Davis, Esq.
August 25, 2010