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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2008-024

Dear Ms. Murphy:

We are writing in response to the proposed rule changes to the FINRA Discovery Guide. As members of a legal services clinic, we write on behalf of unsophisticated, low income and elderly clients, as well as *pro se* claimants. In our practice, in which we primarily represent, on a *pro bono* basis, mostly elderly, mostly low income, and/or otherwise wholly unsophisticated clients, on smaller claims, our clients are often overwhelmed by the mandatory disclosure requirements in the Discovery Guide. Additionally, our limited resources prevent us from representing all meritorious claims, leaving many investors with smaller claims unrepresented. In those cases where we are unable to provide representation, the overly burdensome mandatory disclosures often serve as a deterrent to claimants filing an arbitration claim with FINRA at all. We believe that the following aspects of the proposed changes in the Discovery Guide will prejudice these claimants even further in what is already a prejudicial imbalance of disclosure requirements for customers.

First, FINRA proposes to broaden the scope of current List 2, Item 9 by deleting the reference to firm/associated person(s) from "production of all correspondence between the customer (and any person acting on behalf of the customer) and the firm/associated person(s) relating to the account(s) at issue." The proposed rule would expand presumptive discovery from correspondence between clients and firm/associated person(s) to any correspondence between clients and persons/entities unrelated to the firm concerning the accounts or transactions at issue. It appears that this substantially broader rule would include correspondence with prospective attorneys who, based on the size of the claim, did not take on the customer's representation. As such, the proposed rule would direct customers to produce information that

may be privileged. This particularly prejudices *pro se* claimants who do not have the necessary training or knowledge to identify and distinguish privileged material from unprivileged material. Accordingly, the proposed rule violates important public policy considerations which favor protection of these and other privileged communications.

Second, FINRA proposes to adopt new Item 12 to “require the customer to identify loans that he or she applied for or guaranteed for a five year period prior to the first transaction at issue.” This requirement is overly burdensome and unnecessary, as it would require customers to produce loan documents that are rarely relevant to their claims. For example, customers would be required to produce records from every account they have applied for at a department store or every transfer of a credit card balance. The rule especially prejudices low income clients, who often do not have the resources (e.g., access to accountants) to prepare and maintain financial records, as well as elderly clients, who often suffer from declining memory and have difficulty managing their financial papers. Even more concerning, especially in light of this added burden, is that the additional materials required under this rule would add little value as much of the relevant customer information is already available in customers’ tax returns and other investment documents. Absent a clear showing of necessity, the burdensome requirements of the new rule outweigh any minimal benefit that it may provide.

Third, new List 6 and revised List 10 would “require the customer to produce copies of all materials received or obtained from any source relating to the transactions or products at issue, and other prospective investments, including research reports, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being ‘for internal use only,’ and worksheets or notes.” This rule is over-inclusive, would require production of irrelevant documents, and would place an enormous burden on customers. For example, this rule would require customers to produce any solicitations they have received in the mail. The language of the rule could even be construed to require production of newspaper and magazine articles, which are in most cases clearly irrelevant and unhelpful. Furthermore, the benefits of this rule are uncertain as customers are already required to identify their existing accounts at other brokerage firms and the firms themselves are in a better position to provide documents such as research reports and sales literature that the firm provided to the client. Thus, the proposed rule is merely burdensome and superfluous.

Fourth, new List 12 proposes to “require the firm/associated person to produce a record concerning trading activity in the customer’s account(s) for a maximum of five securities and/or products selected by the customer claimant.” This rule prejudices claimants. Unsuitability and churning claims, for example, often involve more than five securities. Although claimants may technically submit a separate request for additional securities, in practice, arbitrators give great weight to the limits set forth in the Discovery Guide, and are unlikely to extend the list of discoverable trading activity records. Instead of drawing an arbitrary line, the rule should limit what is presumptively discoverable to the securities and/or products named within the four corners of the Statement of Claim. Under our proposal, if less than five securities and/or

products are directly at issue, broker-dealers would not be required to produce additional irrelevant information. On the other hand, if more than five securities and/or products are directly at issue, the required information relating to those securities/products would be presumptively discoverable. Moreover, production of these records would not likely create an additional burden for broker-dealers as they already have electronic access to these documents.

Lastly, the proposed changes extend the discovery period for many financial and other documents from three to five years. This modification is overly burdensome and would seldom provide any benefit. Other than in suitability cases, these documents are rarely relevant to the claims at issue. In addition, many lower income and elderly clients do not have complete records, or the resources to prepare and maintain these records dating back not only for the period in question in their dispute (which could be as much as six years, or in the case of fraud cases, even longer) but an additional five years beyond that. Most find it daunting even to find and produce records for the period governing their dispute through to arbitration. Therefore, absent a showing of substantial need, records beyond the three year period should not be required.

We believe that the above provisions are prejudicial to all claimants. We urge however, that at the very least, clinic clients, elderly and/or unsophisticated claimants with claims of \$50,000 and under, and *pro se* claimants should be exempted from the above proposed rules.

Respectfully submitted,

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