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April 2, 2009

Elizabeth M. Murphy
Securities Exchange Commission
100 F. Street NE
Washington, DC 20549

Re: File No. SR-FINRA-2008-024; Discovery Guide revisions

Dear Ms. Murphy:

Thank you for the opportunity to comment on FINRA's proposed revisions to the Discovery Guide. I ask that the SEC not approve FINRA's proposal, because FINRA's proposal is palpably unfair to the public investor, while overly beneficial to the brokerage firms. The proposal increases the already unfair discovery burden on the public investor, yet continues to allow brokerage firms to not produce key documents and crucial information.

I have been representing public investors in securities arbitration since 1994 (and , occasionally, brokers in employment disputes with brokerage firms). I am also a FINRA public arbitrator, and was an arbitrator for the Pacific Stock Exchange.

As other commentators have pointed out, the proposed revisions presumptively require public investors to reveal years – if not decades -- worth of financial information. Not only is that information irrelevant to most claims filed by public investors, that information is also protected from disclosure by rights of privacy found in state constitutions and statutes, and federal law.

As to relevancy (as other commentators have discussed), financial records are irrelevant in suitability cases, because the suitability determination must be made by the broker at the time of the recommendation, not with the benefit of hindsight. If the broker or the brokerage firm did not have sufficient information about the customer at the time a recommendation is made, no amount of invasive discovery will cure that deficiency. Nor should it.

There may be instances where it is relevant to require the public investor to reveal his or her entire financial history – but that determination should be made on a case-by-

case basis, by a well-trained arbitrator. That information should not be presumptively discoverable in every case filed by every public customer, regardless of the nature of the claims asserted.

As Susan Healy and Christopher Vernon (among others) point out in their comment letter, state constitutional and statutory rights of privacy are also implicated by making personal financial records presumptively discoverable. In California, for example, taxpayers have a right of privacy in their tax returns, a right which California state courts have enforced in virtually every published case (except where there are claims of misfeasance in preparing the tax return itself). This privilege not only benefits the taxpayer, but it also furthers the state's interest in accurately collecting taxes. To make tax returns presumptively discoverable interferes with those rights and interests.

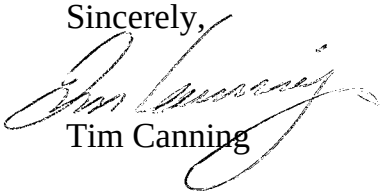
Though these defects are in the current Discovery Guide, FINRA's proposal exacerbates those defects, by expanding the time periods and expanding the types of financial documents that are presumptively discoverable.

Another critical defect in FINRA's proposal is the absence of documents and information which the brokerage firm should be required to produce. Since brokerage firms are required to have a host of categories of documents readily available for audits or SEC investigations, those documents should be presumptively discoverable (especially documents listed in SEC rules 17a-3 and 17a-4). Further, in most public customer cases, complete commission runs for the broker and the branch are important documents; yet, commission runs are not presumptively discoverable under the proposed revision.

Once again, these defects are also in the current Discovery Guide. The proposal does not attempt to correct those problems.

For these reasons, FINRA's proposal should be rejected. At the very least, the SEC should commence formal proceedings to determine whether the proposal should be disapproved.

Sincerely,



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