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April 9, 2009

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

Re: Comments on Proposed Amendments to Discovery Guide in FINRA Arbitrations
SR-FINRA-2008-024

Dear Ms. Murphy:

I am writing to express my support for those comments on behalf of the Public Investors Arbitration Bar Association and others who oppose the proposed amendments to the Discovery Guide. I urge the SEC to reject the proposed amendments to the Discovery Guide to the extent that the changes create a more burdensome and invasive discovery process and therefore work to dissuade investors from pursuing their valid claims against member firms.

Additionally, I would like to urge the SEC to address the cavalier attitude many member firms have regarding the Discovery Guide. It is my experience as a former NASD examiner in New York City, as in-house counsel for brokerage firms and now as an advocate for investors that many brokerage firms expect investors to adhere closely to the production of presumptively discoverable documents listed in the Discovery Guide but that member firms do not have the same requirement.

For example, most all securities arbitration practitioners know that the Discovery Guide (NTM 99-90) specifies documents that are presumptively discoverable and are to be automatically produced without intervention of either FINRA staff or arbitration panels. Several years ago I attended a securities arbitration defense seminar in New York City where I participated in a session on arbitration discovery. I was completely surprised and utterly flabbergasted to hear the comments of one panel member who at that time was one of the top ranked attorneys at national member firm. This attorney stated in no uncertain terms (and even more remarkably with apparent pride) that as a *practice* his firm refused to produce NTM 99-90 documents. He further stated that his firm refused to comply with NTM 99-90 until the Claimant was forced to prepare and file a motion to compel, successfully argue the motion to compel, and obtain the arbitration panel's order compelling production. Not only was his practice what I consider to be poor lawyering but it sums up member firm's comfort with abusing the arbitration process.

Another example of member firms' disdain for and willingness to abuse discovery is the recent response to the Discovery Guide that I received from another national member firm. Despite the

Discovery Guide's requirement to automatically produce the presumptively discoverable documents this member firm responded as follows to the Discovery Guide's List 1, Item 8:

> Response: Respondent will produce the composite information from the Web CRD for Richard J. G_____ and Paul J. S_____as well as any Disclosure Reporting Pages concerning Richard J. G_____ and Paul J. S_____. Beyond the foregoing, Respondent objects to this Request as overly broad and seeking confidential documents not relevant to this dispute or likely to lead to the discovery of admissible evidence.

I removed the surnames in the quote above but this same or very similar response was made to a number of the Discovery Guide List Items.

It is my firm belief that the member firm whose response I quote above and many other member firms adopt their dismissive attitude toward NTM 99-90 document production because there is no real or effective mechanism by which Claimants can or the regulators are willing to use to require NTM 99-90 compliance and prevent discovery abuse. The NASD issued NTM 99-90 and the SEC adopted the Discovery Guide because the discovery process was being abused. Later, the NASD issued NTM 03-70 which reminded ***Respondents*** that abuse of the discovery process would "not be tolerated." Unfortunately the discovery process is still being abused at the expense of the public investors who rely on the SEC to protect them and to help investors seek redress for wrongs committed by member firms.

The time is long past for the SEC to develop a method to stop FINRA arbitration discovery abuse. By so doing the SEC would be better fulfilling that part of its mission to protect the investing public. Many years ago it was member firms that insisted on mandatory binding arbitration as the only dispute resolution forum for investors. Their argument for arbitration was in part to reduce the expense of defending against customer complaints in the more formal civil court forum. To now have the SEC spending its valuable time and limited resources entertaining financial industry requests to make FINRA arbitration more like civil litigation not only ignores history but such use of SEC time and resources benefits the member firms at the expense of the investing public.

Thank you for your consideration of my comments.

Sincerely,

Robert K. Savage