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Via E-Mail and U.S. Mail

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

Re: Comment on Proposed Change to the FINRA Discovery Guide and FINRA Rules 12506 and 12508
File Number SR-FINRA-2010-035

Dear Ms. Murphy:

We appreciate the opportunity to comment on the proposed change to the FINRA Discovery Guide and NASD Rules 12506 and 12508. Our comments focus upon Item 13(b) of List 1 (Documents the Firm/Associated Persons Shall Produce in All Customer Cases), Item 20 of List 1, and Item 4 of List 2 (Documents the Customers Shall Produce in All Customer Cases).

Items 13(b) and 20 of List 1 require broker-dealer respondents to expend significant resources and costs to produce extensive information about (a) accounts that are not at issue, (b) customers who are not parties, and (c) associated persons who had no connection to the claimant. Item 13(b) of List 1 requires broker-dealers to produce virtually all supervisory documents concerning all of their associated persons for a two-year period. The language of Item 13(b) requiring the production of these documents "related to the allegations in the Statement of Claim" does not provide a meaningful limitation. For example, a claimant's allegation of "unsuitable" investments will require the broker-dealer respondent to produce numerous documents **for each account** held at the broker-dealer. Item 20 of List 1 requires detailed information for **every** transaction that an associated person made in all his/her customers' accounts even though those transactions are not the subject of the Statement of Claim. Unlike many of the Items on Lists 1 and 2, this Item does not even try to ensure relevancy by limiting the information to transactions that are specified in the Statement of Claim.

Items 13(b) and 20 of List 1 are overbroad and unreasonably burdensome. They represent a dramatic shift in the information that FINRA previously determined to be presumptively discoverable. Indeed, while the information required by Items 13(b) and 20 maybe relevant in some cases, they are nothing more than a fishing expedition in the majority of cases, unfairly increasing the costs of arbitration for broker-dealer respondents. We recognize that the suggested changes to the introduction of the Discovery Guide offer some instruction

concerning avoiding unnecessary burden. However, our experience has been that arbitrators feel compelled to require production of items on the Discovery Guide Lists and are reluctant to sustain objections based upon burden. Indeed, claimants' counsel frequently argue that FINRA has already balanced the burden to broker-dealers and determined that the burden is appropriate by including the items on the List. Consequently, Items 13(b) and 20 should not be included on List 1 as being presumptively discoverable.

Item 4 of List 2 does not require claimants to produce new account documentation, option agreements, client profiles or similar documentation from securities firms other than the broker-dealer respondent that show the claimant's risk tolerance, investment objectives and financial situation. Such documentation is highly relevant to allegations of unsuitable recommendations and churning as those documents may support the broker-dealer respondent's understanding of the claimant's financial situation and investment objectives. The failure to specify those documents may mislead arbitrators into believing that those documents are not relevant and not subject to discovery. Accordingly, Item 4 should be revised to include documents from securities firms other that the broker-dealer respondent that show the claimant's risk tolerance, investment objectives and financial situation.

Thank you for your consideration.

Very truly yours,

Raymond W. Henney

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