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JONATHAN D. BERG

August 24, 2010

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

Re: File Number SR-FINRA-2010-035
Proposed Rule Change to Amend the FINRA Discovery Guide ("Rule Change")

Dear Ms. Murphy:

The proposed new Discovery Guide is generally unfair to investors and will only serve to make a bad situation worse. I will leave it to others to argue the details. Discovery, or the lack thereof, is but one component of the securities industry's proprietary adjudicatory system that is both dysfunctional and has left the investing public without recourse when wrongdoing occurs.

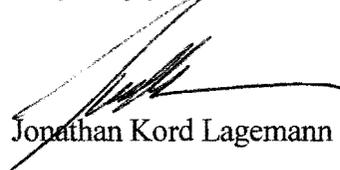
I have continuously engaged in NASD/FINRA arbitration since 1981. Over nearly three decades, I have observed numerous NASD/FINRA initiatives to "improve" the system. From an investor's point of view, the initiatives have consistently made things worse as evidenced by continuously falling "win" and "recovery" rates. Defrauded investors have no effective recourse and are systematically unable to recover losses, even when they "win." As Massachusetts Securities Regulator William F. Galvin famously put it in his testimony before Congress, FINRA arbitration is nothing more than "an industry sponsored damage containment and control program masquerading as a judicial proceeding."

Perhaps the strangest aspect of FINRA arbitration is that the securities regulators, who approve of and monitor the system, have removed the most powerful and effective regulatory tool in their arsenal. The Securities and Exchange Commission and FINRA cannot be everywhere at all times and cannot directly regulate more than 700,000 registered representatives. The most comprehensive and effective system of regulation is to allow private attorney generals to make industry registrants pay significantly when wrongdoing occurs to members of the investing public. But FINRA's "damage containment" arbitration system has removed any probability of this occurring. Securities industry wrongdoers know in advance that they can defraud investors without incurring significant liability for wrongdoing.

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The very existence of the current mandatory arbitration system is powerful evidence that the Securities and Exchange Commission and FINRA have no real interest in effective securities regulation. If securities regulators were serious about fraud prevention, they would (1) allow investors the option to go to court and (2) offer an arbitration system conducted before a neutral forum that is not an association of securities industry members.

Very truly yours,



Jonathan Kord Lagemann