Boliver & Bidwell
Law Firm

Gail E. Boliver†
Eric R. Bidwell
Merrill C. Swartz
†Licensed in Iowa and Nebraska

Attorneys and Counselors at Law

2414 S. 2nd Street
Marshalltown, Iowa 50158
(641) 752-7757; (641) 752-6597 (Fax)

Visit our website:
www.boliverlaw.com

Omaha, Nebraska Office
8712 W. Dodge Rd. Suite 400
Omaha, Nebraska 68114-3431
(402)392-0107; (402)392-1011(Fax)

Grinnell, Iowa Office
Affiliated with Dale A. Lamb, Esq.
717 5th Avenue, Grinnell, Iowa 50112
(641) 236-4630

September 16, 2010

Rule-comments@sec.gov

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

RE: SR-FINRA-2010-035 (Rule Proposal Regarding Discovery Guide in FINRA Arbitrations)

Dear Ms. Murphy:

I appreciate the opportunity to comment on the above proposal regarding amendments to the Discovery Guide. I have just a few comments outlined below:

1. "Commission Runs" are essential to every customer case. It is a rare occasion that issues like 'solicited' vs 'unsolicited' are not contested. The industry would like the label they apply to be presumptive on the issue. Many times "commission runs" prove the fallacy of this position by showing the registered representative's pattern of trading.

2. Certain materials such as advertising, investment models and risk assessment data are frequently not provided for the duration of the account at issue. Materials offered prior to a short account period may be the only source of information available.

3. Time limits. Fundamental investment strategies change frequently. The industry typically wants the customer to produce records spanning a vast amount of time. This may result in the requirement to produce documents for periods of time not at issue. Limits must be reasonable for requests of historical customer documents.

4. Supervision. Rarely does the industry provide data demonstrating supervisor's conflicts/bias. i.e. percentage of "override" or sharing of commissions for products. Such information should be routinely provided.

5. Financial Autopsy. After being sued in arbitration, the industry, for the first time, typically attempts to dissect all financial data and assets of the claimant(s). But, they never requested this material information at the time they were investing the claimant(s)' funds. Limits should be implemented on non-investment assets such as C.D.'s and bank accounts.

6. Non-parties. Frequently, the industry will seek information on non-parties associated with the claimant (parent, child, etc..) Since the standard of suitability applies to the customer, another person's investment data who is acting on behalf of the claimant (POA) is not relevant.

While the proposed new Discovery Guide is an improvement over the current version, it is not the "end of discovery". Arbitrators need to be trained and educated in discovery matters for all types of cases. Furthermore, arbitrators need to use their authority to **enforce** the discovery rules in arbitration. For years, certain FINRA industry members have employed a strategy to stonewall, evade and otherwise obstruct the discovery process in arbitration as a part of their routine. Arbitrators have the authority to sanction the offending party, and must be more diligent in their efforts to stop this abuse.

Very truly yours,

Gail E. Boliver

GEB:mjm/

Gail E. Boliver – boliver@marshallnet.com **Eric R. Bidwell** – ebidwell@marshallnet.com