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September 24, 2010

VIA EMAIL (Rule-comments@sec.gov)

Florence E. Harmon, Acting Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: SR-FINRA-2010-035 (Rule Proposal Regarding Discovery Guide
and FINRA Arbitrations)

Dear Ms. Harmon:

I appreciate the opportunity to make comments on the proposed changes to FINRA's Discovery Guide. I have been representing investors in securities arbitrations since 1992. I am also a member of the board of directors of the Public Investors Arbitration Bar Association. With reservations, I support the proposed rule change.

There are several favorable additions to the Discovery Guide with respect to documents that are presumptively discoverable from respondents in FINRA arbitration proceedings. However, I agree with the comments of Professor Seth Lipner concerning the injection of FINRA into the substance of discovery process in securities arbitration proceedings and to the imposition of a list of presumptively discoverable documents in every securities arbitration proceeding.

By far, the most troubling aspect of the proposed Discovery Guide is its continuation of the requirement that claimants subject themselves to an after-the-fact intrusion into their financial affairs by making presumptively discoverable personal tax returns, tax returns for their businesses, their personal financial statements, and brokerage statements for accounts held at other brokerage firms for the period of three years prior to the transactions at issue. These documents are simply not relevant to all arbitration claims and should not be required to be produced in all arbitration proceedings. Such documents simply have no relevance to claims

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such as fraud claims and defective product claims. By requiring the production of these documents in every case, FINRA improperly communicates to arbitrators that the information in these documents must be relevant to each case or FINRA would not require that they be produced in every case.

Even in suitability claims, these documents are of questionable relevance. Brokers and broker/dealers are required to make suitability determinations based on information supplied by customers before investment recommendations are made. Brokers and broker/dealers do not routinely obtain from their customers their tax returns, financial statements, and monthly statements for other brokerage accounts for three years preceding the date that the account was opened. Requiring the production of such documents in a suitability case affords respondents the opportunity to make specious arguments concerning the purported sophistication of the customer or the ability of the customer to financially absorb the losses from unsuitable investment recommendations.

If FINRA is going to impose a discovery guide on all arbitration proceedings, the above-referenced documents should be excluded from the list of presumptively discoverable documents in every case.

Sincerely,

JOHNSON, POPE, BOKOR,
RUPPEL & BURNS, LLP

/s/ Scott C. Ilgenfritz

Scott C. Ilgenfritz

SCI/dh