



Securities Arbitration Clinic  
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VIA On-Line Submission

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

Re: File Number SR-FINRA-2013-024  
Proposed Rule Change to Amend the Discovery Guide used in commercial arbitration proceedings (to provide guidance on E-Discovery and to clarify the existing provision on affirmations).

Dear Ms. Murphy:

Thank you for the opportunity to comment on the proposed rule change to amend the Discovery Guide to provide guidance on electronic discovery (e-discovery) and product cases, and to clarify the existing provision regarding affirmations made when a party fails to produce documents specified by the Guide. We are writing this comment on behalf of the Securities Arbitration Clinic of St. John's University School of Law. The Securities Arbitration Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization.

The Securities Arbitration Clinic represents aggrieved investors and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the arbitration process. The clients the Clinic represents would often be pro se if not for the Clinic's representation, and we are sensitive to the issues that would be faced by pro se customers.

The clinic is generally in support of the revisions to the Guide. With respect to the parties' cooperation regarding the production of documents, the Guide should provide guidance that it is expected that keywords, phrases, or other words are to be used in a search are discussed prior to the production of documents. This would ensure that what the requesting party is asking for is being searched and ultimately produced. We are also supportive of the use of the term "reasonably usable format". It is important that the receiving party does not have to spend unnecessary time trying to view or convert the files that are sent to them. Allowing any format to be acceptable would pose a substantial burden on counsel, as well as their clients.

We are also in favor of the guidance given to arbitrators surrounding terms used in discovery. However, we believe that the arbitrators should be provided with some guidance as to what should be considered overly expensive or burdensome. Firms maintain most documents in electronic format. They should not be permitted to object to documents that would otherwise be discoverable simply because the documents are maintained electronically. Providing the arbitrators with more specific guidance will provide more consistency in decisions being made by arbitrators across the board and will ensure that the arbitrators will be neither too broad nor too narrow in determining what exactly qualifies as overly expensive or burdensome.

With regards to the proposed rule changes for product cases, we find that FINRA's rationale for including the documents in the introduction to the Guide rather than on the presumptively discoverable document list is less than compelling. It goes without saying that arbitrators are more likely to compel production if documents are on the list than in the introduction to the Guide. By including the documents in the introduction, FINRA has essentially created a third category of documents. There are now documents on the lists, documents not on the lists, and documents in the introduction. This third category of documents has the potential to confuse both arbitrators and customers. Moreover, pro se customers would have to file a separate discovery request for these documents if they wish to have the firms produce them. If the documents were included on the lists, the firms would have an affirmative duty to produce the documents or otherwise object. This will make the process fairer and clearer for customers who are attempting to represent themselves in a product case.

We are in favor of the expansion to the affirmation language in the event that one of the documents specified on the lists is not produced. However, the language should be expanded to include: (1) not only documents specified in the Document Production Lists but also *any and all* documents requested by the opposing counsel and not objected to; and (2) a provision that requires the party to supply the exact words that were used in an electronic search for documents (i.e., such as when searching through e-mail or other similar databases). This will allow the parties to determine if the search was as comprehensive as it should have been.

We appreciate the ability to comment on these very important changes. Thank you for your consideration in this matter.

Sincerely,

/s/

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Legal Intern

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Legal Intern

Christine Lazaro, Esq.  
Director