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April 3, 2009

VIA E-MAIL

April 3, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Amendments to Discovery Guide in FINRA Arbitrations
SR-FINRA-2008-024

Dear Ms. Murphy:

I am an attorney in private practice that represents customers as a part of that practice. I am also a FINRA Arbitrator, a former Registered Representative, a former Assistant District Attorney, and a former Deputy Attorney General.

I write in support of the letter of March 27, 2009 submitted by the Public Investors Arbitration Bar Association (PIABA) of which I am a member. In addition, I would like to express some of my own additional concerns.

I recently spoke to a prospective client regarding where his claim against a financial professional could be filed. I told him that if he had signed a FINRA arbitration agreement he would be forced to file his claim in an arbitration forum run by the industry that the financial professional worked in, with rules primarily written by the industry's representatives and the staff of the industry-run forum. I told him the development of the rules received a little input from the public and final approval from the SEC, the government agency that has been responsible for regulating the industry. And on top of that, the arbitration forum where he was forced to file his claim was going to cost him thousands of dollars more to use than the state court system in the county where he lived.

What I did not discuss with him in that initial phone call was the abusive document discovery system that he would be subject to—a system that was devised by the industry-run forum and approved by the Securities and Exchange Commission. If the current FINRA proposed amendments to the Discovery Guide are approved by

the SEC, that discovery system will take a few little steps forward, but will also take many large steps backward.

As an example, the proposed guidelines would require that customers provide 5 years of financial data, as if the current 3 years of data required is not abusive enough. In addition, loan applications of customers would be required. This requirement is nothing short of abusive and appears intended to harass customers and frighten-off potential claimants. It is important to note that, apparently, these documents were not considered important enough to the industry to require them when the account was opened or when the recommendation to purchase securities was made. However, if a customer is going to sue an industry member, the documents suddenly become important to the "suitability" and "know your customer" requirement.

In addition, believe it or not – and I know this sounds preposterous—the proposed amendments to the discovery guide require the customer to provide recordings of conversations or telephone calls in the customer's possession, but do not require the same of the member firm or associated persons. The presence of this one-sided provision in the proposed amendment to the discovery guide provides irrefutable proof that there is something deeply and fundamentally wrong with the discovery guidelines and with the process by which they are being amended, or so it seems to me.

Finally, where is the requirement in the discovery guide that associated persons turn over their personal financial data such as tax returns and loan applications? Motive is an important and relevant factor in any litigation where an associated person is accused of doing something improper. Therefore, the accumulation of things by an associated person, and the need of funds to pay for them, becomes a motive for misconduct from theft to unsuitable recommendations. Yet, the discovery guide and the proposed amendments to it are silent regarding such documents. To rephrase the title of a book from many years ago, and with due apologies to its author, "Where are the broker's yachts and how much is owed on them?" Unfortunately, as long as the industry controls the arbitration forum, we are unlikely to see anything approximating that type of discovery.

Very truly yours,

Rob Bleecher, Esquire