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April 3, 2009

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

RE: SR-FINRA-2008-024

Dear Ms. Murphy:

The purpose of this correspondence is to express our position that the proposed changes to the FINRA Discovery Guide fail to capitalize on the opportunity to increase investor protection. Levin Papantonio focuses its practice representing investors who have been harmed by the misconduct of the securities industry ("Industry"). While the effort to revise the Discovery Guide to reduce ambiguity and, in some instances, increase documentation available to investors is appreciated, the revisions taken as a whole do not advance investor's interests. The proposal moves in the wrong direction in light of today's financial crisis, which was caused in large part by the irresponsibility of the Industry. Rather than imposing a higher standard of accountability on the Industry, the proposed revisions further relax the duties that the Industry members owe to its own clients. This is especially troubling in light of the fact that investors have lost the right to bring their claims before a jury of their peers and instead are forced to seek relief in an industry-sponsored forum. Instead of recognizing the fact that self-regulation necessitates that its members be held to the highest of standards, the proposed changes further erode an investor's ability to recover unwarranted losses.

For years Levin Papantonio has worked to combat discovery abuses by the Industry in its own forum. The Industry recognized the abuse when FINRA generated NTM 03-70. The abuse that was the catalyst for NTM 03-70, however, still remains as the Industry continues to file baseless objections to the current Discovery Guide. The proposed revisions, therefore, should include a higher burden for failing to comply and increase the transparency of its members. Instead, the proposed revisions miss the opportunity to further implement measures that would increase investor protection.

We have highlighted a few sections of the proposed Discovery Guide that will prejudice investors once they file a claim against the Industry. The proposed changes have relieved the Industry of many of its discovery obligations in its own dispute resolution forum. On the other hand, the investor's discovery obligations have been increased exponentially. The proposed changes will be used to support the Industry's practice of delving into irrelevant material during arbitrations.

List 1, Item 1 of the Discovery Guide has been removed. This list used to require the broker-dealer to produce all records of the firm and associated person relating to the investor's account. Despite its regulatory duty to maintain these records, the investor is the only party with the duty to produce such documents in the event of a dispute. It is difficult to understand why an investor is required to produce all documents relating to his account, while the broker-dealer, which has a duty to maintain these documents, does not. There is no plausible explanation for removing this presumptively discoverable list.

List 2, Category 12 now requires the investor to identify all loans applied for by the investor, or guaranteed by the investor, from 5 years prior to the first transaction complained of through the filing of the Statement of Claim. This includes car loans, mortgage loans, home equity loans, credit card applications, and personal loans.

The information contained in the investor's loan documents should already be known by the financial advisor prior to making any financial recommendations. When a client opens an account with a brokerage firm, the firm is required to "Know its Customer" pursuant to NYSE Rule 405. Once the financial advisor "knows" the investor, FINRA Rule 2310 requires the financial advisor to have reasonable grounds for believing that the recommendation is suitable for such investor upon the basis of the facts, if any, disclosures by such investor as to his other security holdings and as to his financial situation and needs. A broker-dealer's failure to gather information about assets and liabilities prior to making a recommendation should not be minimized by allowing the broker-dealer to perform an after-the-fact analysis.

In addition, Article I, Section 23 of the Florida Constitution protects the disclosure of its citizens' personal financial information. Making investors' personal loan information presumptively discoverable invades the investors' right to privacy without any showing of relevancy. The broker-dealer should be required to at least make a showing of relevancy in light of the significant privacy issues.

On the other hand, there are several proposed revisions that will be helpful to hold the Industry accountable for the current onslaught of claims based on structured products. **List 12, Item 1** would allow the investor to identify up to 5 particular products at issue, and the firm is then required to produce the financial advisor's trading activity and compensation for those particular securities. Although requests beyond 5 particular products are not presumptively discoverable, **List 12, Item 2** allows an investor who held more than 5 products at issue to make an additional request for the financial advisor's trading activity and compensation for the additional securities at issue. In addition, **List 11, Item 3** would require the production of all documents between the firm/associated person and the investor relating to "asset allocation,

diversification, and trading strategies." As a result, broker-dealers will be held accountable to the standards it identifies in its own materials.

Overall, the Industry has continued its abuse of its discovery obligations under the original Discovery Guide. It has been rewarded for its stonewalling practices with the new revisions to the Discovery Guide. The Industry no longer has to produce many of the documents essential for the investor to protect their interests. In addition, the investors' obligations have now been extended to produce documents going back five years and must now produce private loan information. The proposed revisions should be re-addressed and not passed in its current form.

Respectfully,

Peter J. Mougey, Esq.

Kristian P. Kraszewski, Esq.

PJM/KPK/mll