LEVIN • PAPANTONIO
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PROFESSIONAL CORPORATION ATTORNEYS AT LAW

KIMBERLY LAMBERT ADAMS
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TROY A. RAFFERTY
MATTHEW D. SCHULTZ
W. CAMERON STEPHENSON
LEO A. THOMAS
BRETT VIGODSKY
AARON L. WATSON

OF COUNSEL:
LAURA S. DUNNING
(LICENSED ONLY IN ALABAMA)
ROBERT F. KENNEDY, JR.
(LICENSED ONLY IN NEW YORK)
GERALD A. McGILL
PAGE A. POERSCHKE
(LICENSED ONLY IN ALABAMA)
LEFFERTS L. MABIE, JR. (1925-1996)
D.L. MIDDLEBROOKS (1926-1997)
DAVID H. LEVIN (1928-2002)
STANLEY B. LEVIN (1938-2009)

July 11, 2013

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

Re: SR-FINRA-2013-024

Dear Ms. Murphy,

I write to comment on FINRA's proposed revisions to the Discovery Guide. I am currently a director (and former President) of the Public Investors Arbitration Bar Association (PIABA) and have represented several hundred investors in FINRA arbitrations.

When FINRA updated the Discovery Guide in 2011, it left open issues relating to electronic discovery and the unique discovery needs in product cases. FINRA's proposed amendments go a long way towards addressing these issues, however, I believe that the guidance can go further in several respects.

While the proposed amendments encourage parties to discuss the form in which they intend to produce electronically stored information (ESI), they are somewhat vague as to production protocols.

I respectfully suggest that the guidance be more specific and indicate that if the parties are unable to reach an agreement as to production protocols, the responding party must produce the ESI either in the form in which it is ordinarily maintained--i.e., in its "native" format--or in a reasonably usable form. Although, this would not require that the responding party make a native format production, it would require that the production be made in a reasonably usable form. Further, it should prohibit the responding party from converting ESI to a form that makes it difficult or impossible for the requesting party to use the information efficiently in the litigation. For example, if the responding party ordinarily maintains the ESI in a searchable form, it is inappropriate to produce it in a form that removes or significantly degrades this feature. The idea being that parties would rather obtain native documents allowing them to work with and view the content

OFFICE: 316 S. BAYLEN STREET • SUITE 600 • PENSACOLA, FL 32502
CORRESPONDENCE: P.O. BOX 12308 • PENSACOLA, FL 32591 CONTACT: (850) 435-7000 • (850) 435-7020 FAX • WWW.LEVINLAW.COM

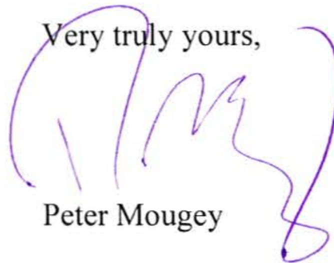
in a meaningful manner rather than receive images that can be useless, cumbersome, or exceedingly difficult to accurately use and understand.

In addition, the guidance should be clear that objections made by brokerage firms as to the cost or burden of electronic discovery must be highly scrutinized. In my experience, brokerage firms often use claims of cost and burden as a means of obscuring relevant information that is damaging to their case. Production in a "native" format is usually quite cost effective, as file conversion becomes unnecessary. Thus, objections based on claims of cost and burden are usually wholly without merit.

With respect to product cases, FINRA has proposed to add guidance to the introduction of the Guide on the types of documents that customers may request in a product case. While this is helpful, the inclusion of documents on a list of presumptively discoverable documents is preferable. In addition, specific guidance to arbitrators is needed as to the appropriate scope of discovery in product cases. Brokerage firms often try to limit product discovery to information given to the claimant or communications regarding the claimant, rather than information and communications relating to the product and similar products. Often times this product related information and communications has already been produced to regulators.

I applaud FINRA's work toward making the Discovery Guide more comprehensive and appreciate the opportunity to provide comment.

Very truly yours,



Peter Mougey