

# Public Investors Arbitration Bar Association

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July 29, 2009

## Via E-Mail & First Class Mail

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

**Re: SR-FINRA-2009-041 Rule Proposal Regarding Changes in FINRA  
Rules 12100, 12506, and 12902**

Dear Ms. Murphy:

Thank you for the opportunity to comment on the above-referenced Rule Proposal of the Financial Industry Regulatory Authority ("FINRA") to amend FINRA Code of Arbitration Procedure Rules 12100, 12506, and 12902. I write on behalf of the Public Investors Arbitration Bar Association ("PIABA") in support of the changes to Rules 12100 and 12506 but in objection to Rule 12902.

PIABA is an international bar association, consisting of approximately 500 members, dedicated to the protection of investors' rights in securities arbitration matters. As such, PIABA is deeply concerned with the procedural rules which govern arbitration proceedings in the FINRA forum.

PIABA supports proposed Rules 12100(r) and 13100(r). PIABA believes that the definition of "associated person" should include those individuals who have applied for registration, in addition to those who are currently registered. This would help clarify which individuals are subject to FINRA's jurisdiction and help avoid needless disputes over this issue.

PIABA also supports proposed Rule 12506(a), which would encourage parties to download the Discovery Guide from the website. Currently, it is FINRA's practice to mail a copy of the Discovery Guide to each party. Many attorneys who handle FINRA arbitration cases are already familiar with the Discovery Guide and do not need it re-sent to them in every case. Moreover, it would probably save FINRA considerable expense and effort and avoid wasting paper.


However, FINRA should continue to make sure that the parties and their attorneys are aware of the Discovery Guide. FINRA should make this notification sufficiently conspicuous so that it will be noticed by all concerned. Furthermore, PIABA believes that FINRA should provide a paper copy of the Discovery Guide to a party upon request. Finally, FINRA should also ensure that the version of the Discovery Guide that is posted is actually the version that was disseminated by way of Notice to Members 99-90. The version posted on the FINRA website as of July 21, 2009 did not contain the same introductory language and formatting as the 99-90 version. For example, it does not include an explanation concerning requests for information, as does the 99-90 version of the Discovery Guide.

Finally, PIABA opposes the proposed change to Rule 12902. The new language could discourage customers from filing counterclaims against member firms that bring claims against them. Even in the event that a customer files counterclaims and prevails against the member firm, this language suggests that the customer could still be liable for such hearing fees. FINRA's stated objective is "to protect investors and the public interest." This proposed language would be contrary to that stated objective.

In sum, PIABA supports the acceptance of proposed Rules 12100 and 12506 but objects to proposed Rule 12902. I would like to thank you once again for the opportunity to comment on this rule proposal.

Sincerely,

PUBLIC INVESTORS ARBITRATION  
BAR ASSOCIATION

  
Brian N. Smiley  
President