



SECURITIES EXPERTS ROUNDTABLE

www.securitiesexpert.org

June 19, 2018

via e-mail – pubcom@finra.org

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Dear Ms. Piorko Mitchell:

The Securities Experts Roundtable (SER) Board of Directors, on behalf of our membership, respectfully submits comment on Regulatory Notice 18-13. SER is a national professional association of securities experts with an interest in the improvement of securities dispute resolution. SER is claimant/respondent neutral. Collectively, our experts have testified in thousands of NASD and FINRA arbitrations, as well as in most all arbitration forums, state courts, and federal court.

RN 18-13 footnote 11 relies on the turnover calculation methodology referenced in *Rafael Pinchas*, 54 S.E.C. 331, 339-40 n.14 (1999):

Turnover rate is calculated by “dividing the aggregate amount of purchases in an account by the average monthly investment. The average monthly investment is the cumulative total of the net investment in the account at the end of each month, exclusive of loans, divided by the number of months under consideration.”

The Pinchas case follows the method set forth in *Looper & Co* 38 S.E.C. 294, 297n.6 (1958). Some of our members pointed out that practitioners have customarily used average equity as the denominator in the formula. There is support for the position. For example, in NASD Disciplinary Proceeding No. E9B2003033701, December 12, 2006, NASD Division of Enforcement v. Keith Howard Medeck, the NASD staff used the “modified Looper formula.” The modified formula substitutes “average equity” for “average investment” in the denominator for accounts that primarily hold securities as opposed to cash. We note that many member firms use the modified formula to prepare exception reports designed to identify excessive trading.

Officers and Directors

President: Ross Tulman, OH
President-Elect: Gordon Yale, CO
Secretary: Rick Ryder, NJ
Treasurer: Elizabeth Falk, CA

Alan Besnoff, NH
Paul Carroll, NJ
Jerry DeNigris, NJ
David Keogh, NJ

Bob Lawson, MN
Craig Murray, CA
Jeffery Schaff, IL
Carrie Wisniewski, GA
Patricia Koetting, *Controller*

Ms. Jennifer Piorko Mitchell

June 18, 2018

Page 2

SER does not take a position as to which method is preferable. We believe that the appropriate methodology is case specific and that determination is properly left to the trier of fact. We encourage FINRA to modify RN 18-13 footnote 11 to indicate that different turnover calculation methodologies may be appropriate depending on the specific facts and issues presented at hearing.

Respectfully submitted on behalf of our members,

A handwritten signature in blue ink, appearing to read "Ross Tulman", with a long horizontal flourish extending to the right.

Ross Tulman
President, Securities Experts Roundtable
rpt@tiagroup.com