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September 24, 2018

VIA E-MAIL: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Comments Concerning Regulatory Notice 18-22
Discovery of Insurance Information in Arbitration

Dear Ms. Mitchell:

Thank you for the opportunity to comment on FINRA Regulatory Notice 18-22. The proposal amends the discovery list, allowing a claimant to receive, upon request, a respondent's third-party coverage information. Unlike other items on the discovery list, this information is not automatically discoverable. While we commend FINRA for acknowledging claimants' need for coverage information, this information should be automatically discoverable.

We work with investors who otherwise could not obtain legal representation because their claims are too small. When investors call our clinic, they are concerned with throwing good money after bad. Thus, coverage information, particularly for smaller firm respondents, helps many consumers assess whether to bring an otherwise valid claim.

FINRA's Discovery List should require mandatory production of coverage information. Discovery of coverage is commonplace. Georgia law requires pre-suit production of coverage information upon request.[1] Under both federal and some state laws, once suit is filed, defendants must disclose coverage information.[2] Respondents should simply be required to provide information in FINRA proceedings that they routinely provide in other contexts.

Requiring respondents to do that which they are required to do elsewhere will not result in prejudice. The proposal tracks long-standing federal and state evidentiary rules regarding use coverage information. The protections contained in the amendment's language, coupled with arbitrator training, strike the appropriate balance between a respondent's interest in protecting

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1 O.C.G.A. § 33-3-28(a)(2) (2018).

2 *See* Cal. Civ. Proc. Code § 2017.210; Fla. Stat. § 627.4137 (2018); N.Y. C.P.L.R. 3101(d)(2)(f) (McKinney 2018); Tex. R. Civ. P. 192.3 (West 2018).

against undue prejudice with the claimant's need for information that respondents are required to turn over under many state's laws.

As a clinic that primarily represents claimants, we appreciate FINRA's willingness to amend its rules in a way that accommodates our clients. Although we support requiring disclosure of coverage information upon request, we believe FINRA should implement an automatic mandatory disclosure of this information because it is commonplace, and a practice followed by both federal and state laws. Finally, we understand the concerns about an arbitrator inappropriately receiving coverage information. However, that issue can mitigated by implementing the proposal set forth in the Regulatory Notice and mimicking the federal and state rules that distinguish between discoverability and admissibility.

Best regards,

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