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August 23, 2018

Via Email to pubcom@finra.org

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

Re: Regulatory Notice 18-22

Dear Ms. Mitchell:

I write in support of the proposed amendment to the Discovery Guide to require routine disclosure of liability insurance coverage by broker/dealers who are thinly capitalized or not self-insured. I have represented investors in FINRA arbitration for nearly 10 years and have worked in this unnecessary cloud of secrecy about liability insurance coverage. The fact is, this proposal is in the best interest of both investors and the industry. If liability insurance exists, it is in the best interest of the B/D to properly disclose the existence of the claim to its carrier so that it can take appropriate action. It is an all too common scenario where a B/D informs a Claimant-attorney, on the eve of hearing usually, that their client cannot afford to pay either a settlement or an award, and that because the claim was not reported to the carrier in a timely fashion, that coverage had been denied. This notice will prevent this sort of irresponsibility. This notice will mandate the claim be reported to the carrier and that the carrier then affirmatively cover the claim, decline to cover it, or cover it under a reservation of rights. In any event, the cloud of secrecy will be removed to the benefit of all parties.

This notice will also prevent B/Ds from threatening bankruptcy or from filing Form BDW in the face of customer complaints, in the event there is coverage. If insurance information is disclosed to the Claimant-attorney, then appropriate actions can be taken to protect the rights of the claimant with coverage counsel. FINRA will not mandate its members maintain adequate capital reserves to pay claims, it will not even mandate its members maintain a penny of liability coverage. The least FINRA can do in fulfilling its mandate to protect investors, is to mandate its members disclose the information about liability coverage, if it exists. Disclosure of liability insurance coverage has been part of the Federal Rules of Civil Procedure for decades, mandating that coverage be disclosed. *See Federal Rule* of Civil Procedure 26(a)(1)(A)(iv). This

disclosure must be made in the early stages of the case, which is in line with this being a routine disclosure in the Discovery Guide.

This debate has nothing to do with greenlighting claims or using the existence of insurance coverage as evidence of something. Those arguments against this proposal are red-herrings. The policy is not admissible under the Federal Rules and would have no relevance to the legitimacy of the underlying claims. The idea that the disclosure of insurance coverage would entice filings is an admission by the Industry that its members in fact "plead poverty" as a tactic to avoid claims. That is abhorrent and should not be countenanced. Claims are decided on their facts and merits. They should not be decided by a FINRA member's choice to hide insurance carrier information because it does not want to pay its deductible.

If you have any questions about any of the matters contained herein, please do not hesitate contact me.

Sincerely,

/s/ Joe Wojciechowski