

Bragança Law LLC

September 24, 2018

Via Email to pubcom@finra.org

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

***RE: Regulatory Notice 18-22 Proposed Amendment to Discovery Guide To Require
Production of Insurance Information***

Dear Ms. Mitchell:

I write in support of the proposed amendment to the Discovery Guide that would require routine disclosure of liability insurance coverage by certain FINRA member firms. My comments are based upon my experience as a commercial litigator representing Fortune 500 companies, an SEC Enforcement Attorney, and an attorney representing investors in FINRA arbitrations.

The availability of potential insurance coverage is essential information for investors to consider in a FINRA arbitration against an associated person or a firm that is thinly capitalized. The unfortunate reality is that many FINRA member firms and associated persons either lack the resources to pay an arbitration award or have put their assets out of reach of potential claimants. As a result, an investor's recovery from a thinly capitalized firm may be limited to insurance coverage.

Smaller firms often claim in settlement negotiations with investors that they have no insurance coverage or severely depleted insurance coverage. In FINRA arbitrations, unlike many other dispute resolution fora, it is rare for investors to be able to verify such claims. This is in stark contrast to the Federal Rules of Civil Procedure and many state rules of civil procedure, which require the production in discovery of applicable insurance policies. *See* Federal Rule of Civil Procedure 26(a)(1)(A)(iv). By failing to require the disclosure of insurance policies in arbitration proceedings, FINRA significantly disadvantages investors.

FINRA asked for comment on what documents would satisfy the proposed rule. FINRA should require the production of a complete copy of each policy that might cover the claim, including all endorsements and riders. FINRA should also require the production of evidence of any reduced limits of liability below the limits stated in the policy.

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I agree with many others who have said that in the vast majority of cases, the existence of insurance should not be admissible as evidence in the hearing, and that the proposed rule adequately addresses that issue. Inadmissible insurance policies are no different from inadmissible settlement offers. Insurance information can be handled in the same way.

The required disclosure of insurance information from thinly capitalized firms is long overdue. The proposed rule should be adopted.

Thank you for your consideration.

Very truly yours,



Celiza P. Bragança