



September 24, 2018

Via Electronic Filing

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

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

Dear Ms. Mitchell:

The Cornell Securities Law Clinic (the "Clinic") submits this comment letter in support of the proposed amendments to the Discovery Guide's ("Guide") Firm/Associated Persons Document Production List ("Firm/Associated Persons List"). The Clinic is a Cornell Law School curricular offering in which law students provide representation to public investors as well as public education on investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see <http://securities.lawschool.cornell.edu>.

The current Guide does not list third-party insurance information as presumptively discoverable in the Firm/Associated Persons List. The absence of insurance information contrasts the Guide with the Federal Rules of Civil Procedure, where third-party insurance information is presumptively discoverable. See Fed. R. Civ. P. 26(a)(1)(A)(iv).

The proposed amendments require, in customer arbitrations, firms and associated persons to produce documents concerning third-party insurance coverage upon request. Additionally, the proposed amendments strictly limit the circumstances under which insurance coverage information could be presented to the arbitrators. The Clinic strongly supports the proposed amendments for the reasons set forth below.

1. The Clinic Supports Adding Third-Party Insurance Information to the Guide's Firm/ Associated Persons List

The Clinic strongly supports the amendments to the Guide which will make information relating to third-party liability insurance discoverable upon request. The importance of information relating to the existence and scope of liability insurance was demonstrated earlier this year when FINRA itself recognized the problem of unpaid arbitration awards. See "FINRA



Perspectives on Customer Recover” (February 8, 2018), http://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf. The Clinic supports the amendments for two primary reasons.

First, the amendments give customers access to the same information afforded to them in federal civil court. Customers make very important life decisions during arbitration proceedings and insurance information is material to those decisions. Because federal civil courts already list insurance information as presumptively discoverable, the amendments help remove a disadvantage customers face in FINRA arbitration with regard to such information. The amendments thus serve to level this playing field.

Second, as a result of the amendments, customer arbitrations will be more efficient. The ability to pay is an important consideration in resolving a case. FINRA states in Regulatory Notice 18-22 that disclosure of insurance information will aid settlement discussions and ensure that such information is consistently disclosed rather than made available on a case-by-case basis. We agree with FINRA’s assessment.

2. Response to Objections

There are possible objections to the amendments, none of which have merit.

There is little risk that insurance information will prejudice the arbitrators against firms and associated persons. FINRA proposes to provide neutral training to arbitrators to ensure they are not prejudiced when they learn of insurance information. Moreover, arbitrator exposure to insurance information will decrease due to the amendments. When counsel for aggrieved investors requests to discover insurance information, presumptive discoverability will, if followed, prevent the question from being raised and debated in the presence of the arbitrators. Further, FINRA’s proposed sanctions for unauthorized disclosure to arbitrators should sufficiently deal with firms’ concerns.

Additionally, the burden of litigation will not increase for firms because the amendments will foster increased consistency and efficiency in arbitration proceedings. The amendments will end the unnecessary practice of motions to obtain important information relating to insurance.

3. FINRA Should Clarify the Meaning of “Third-Party Insurance”

The Clinic proposes that FINRA offer further clarification of what will be considered “third-party insurance” coverage. Is insurance provided by an affiliate of the member considered “third-party insured”? We believe it should be. If “third-party insurance” is not clearly defined, firms may refuse to voluntarily disclose insurance information upon request, defeating the benefits of the proposed amendments.

Conclusion

The Clinic supports the adoption of the proposed amendments requiring firms and associated persons to produce third-party insurance information upon request, subject to the restrictions on the use of such information set forth in the amendments.

Respectfully submitted,

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