

Thursday, August 23, 2018
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street
Washington, DC 20006-1506

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 amendments to the Discovery Guide to require the production of insurance information when requested by claimants; I endorse Robert S. Banks, Jr.'s July 26, 2018 comments, as amended for my practice as follows:

The existence and scope of liability insurance policies is essential information for attorneys to consider if they are to properly advise their investor clients in cases where the respondent is not highly capitalized or self-insured. The unfortunate reality is that many member firms and associated persons are financially unable to satisfy arbitration awards.¹ In too many cases, the ability to pay is an essential consideration when advising clients on whether to go to hearing or settle, and whether a settlement proposal from either side is fair and reasonable under the circumstances. Without that critical insurance information, we are operating in the dark. We are put in a position where we have to advise clients on what may be the most important financial decision in their lives without knowing one of the most critical facts. That untenable position is inconsistent with Finra's "Investor Protection" mandate.

The proposal would do nothing more than put parties in customer disputes on the same playing field that exists in many states. For example, in my home state of Minnesota, insurance policies have been routinely produced in discovery for many years. In fact, it is now a Required Mandatory Disclosure which counsel must produce, without the other side's request in the initial disclosures. Minnesota Rule of Civil Procedure 26 (a)(1)(D) provides:

for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

¹ Finra recognizes the unpaid arbitration award issue and has published a paper on it this year, stating that "FINRA has been focused on this important issue for many years in the context of the arbitration forum that FINRA operates for the resolution of disputes between customers and FINRA members or their employees." See: Finra Perspectives on Customer Recovery (February 8, 2018) at http://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf.

Minnesota Rule 34 provides as follows:

34.01Scope

Any party may serve on any other party a request within the scope of Rule 26.02:

(1) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy, test, or sample:

(A) any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained - translated, if necessary - by the respondent through detection devices into reasonably usable form, or,

(B) or to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of Rule 26.02 and that are in the possession, custody or control of the party upon whom the request is served, or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

(Amended effective July 1, 2007; amended effective July 1, 2018.)

Finra asked for comment on what documents would satisfy the proposed rule:

the dec pages for any named party, usually both the firm's master policy and the policy for individually named registered representative, along with a complete copy of the policy itself, including any amendments and riders, and list of exclusions if these are not contained within the policy itself.

The required disclosure of insurance information from non-highly capitalized and self-insured firms is long overdue. On behalf of clients of smaller broker dealers which comprise the largest share of total FINRA member firms, I exhort FINRA to promptly adopt this rule and permit its application retroactively to all current arbitrations. Thank you for your consideration.

Very truly yours,

s/Mark E. Czuchry

Mark E. Czuchry