I write in support of the proposed amendments to the Discovery Guide to require the production of insurance information when requested by claimants. I have represented investors in securities arbitration and litigation for over 20 years.

If customers were not forced by contracts of adhesion into arbitration, and could instead pursue these claims in court, brokers and their firms would be required to provide insurance information under the Federal Rules of Civil Procedure and most state civil practice acts, as well as some state laws. As every attorney who has taken civil procedure knows, Fed.R.Civ.P. 26(a)(1) requires disclosure, without a request by plaintiff, of "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." As a further example, Georgia statutory law provides, at OCGA 33-3-28, that "every insurer providing liability or casualty insurance coverage in this state and which is or may be liable to pay all or a part of any claim shall provide, within 60 days of receiving a written request from the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager stating with regard to each known policy of insurance issued by it, including excess or umbrella insurance, the name of the insurer, the name of each insured, and the limits of coverage. Such insurer may provide a copy of the declaration page of each such policy in lieu of providing such information."

Requiring disclosure of insurance coverage (if any) in arbitration is neither unfair nor unreasonable. Nor does it impose any undue burden upon broker-dealers, as revealed by the uniform recognition that disclosure of such information is required in court proceedings. Rather, it is unfair and unreasonable that because the industry has insisted on mandatory arbitration, broker-dealers can currently assert, with impunity, that they can withhold this vital information from aggrieved investors.

FINRA's website says it "is dedicated to investor protection." One of the many ways that FINRA can, in fact, provide protection to investors is to require broker-dealers to disclose this vital insurance information. Since these disclosures are uniformly required by the well-reasoned and long standing procedures of our court system, there is no principled reason that they should not also be required in mandatory arbitration.

Robert C. Port

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