9/24/18

Sent via e-mail to: pubcom@finra.org

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

RE: Regulatory Notice 18-22: Discovery of Insurance Information in Arbitration

Dear Ms. Piorko Mitchell,

Regulatory Notice 18-22 requests comments on a proposed amendment to the Discovery Guide's Firm/Associated Persons Document Production List to require firms and associated persons, upon request, to produce documents concerning third-party insurance coverage in a customer arbitration proceeding. As an owner/operator of a small firm, I oppose this proposed amendment.

The Arbitration process is already very one-sided against members. In 70% or more arbitrations, industry members who understand the day to day operations of what it means to own, operate or work in a broker-dealer are not selected to sit on arbitration panels. This means that no longer are industry member cases reviewed by their peers, which has caused a lot of damage to small firms due to the lack of expertise of the panels.

Claimants attorneys make any and every allegation they want with little to no recourse because baseless allegations, and in some cases outright lies, do not lower the credibility of the claimant. In addition, arbitrators very rarely award attorney's fees, even in cases where there are frivolous claims and expungements are granted. These are facts.

The expungement process has become far more difficult and expensive and As per Reg Notice 17-42, three arbitrators, all of whom must be qualified as public chairpersons, amongst other things, must also have the following qualifications: (1) admitted to practice law in at least one jurisdiction; and (2) five years' experience in any one of the following disciplines: (a) litigation; (b) federal or state securities regulation; (b) administrative law; (c) service as a securities regulator; or (d) service as a judge.

The standards for arbitrators who can take false allegations off our licenses are higher than the standards for the arbitrators who are hearing the cases, and this is very one sided. Consequently, even industry members who are found NOT to have committed the alleged violations sometimes, many times, cannot get the false allegations expunged from their record which can be viewed by all on BrokerCheck; this is flat out wrong and needs to be corrected immediately.

All firms, including small firms, are suffering as a result of a very one-sided arbitration process, and we are considering giving them more? Reg Notice 18-22 states the regulatory need is to ***help customers determine a litigation strategy in arbitration cases***. This reasoning in my opinion is deplorable; to support plaintiff's counsel in determining the most they can sue us for regardless of the merits of the case is not only unfair and misguided, it is also wrong.

If we really want to help claimants determine a litigation strategy, let's inform them that they should stop making baseless allegations and naming every person listed on form bd in an attempt to extort a settlement because, other than just being a harassment technique:

> Insurance coverage **specifically excludes** claims arising from any Actual or **"Alleged":**
>
> - Negligent act, error, omission, misstatement, misrepresentation, neglect or breach of duty. Arising out of or attributable to a dispute over fees, commissions, charges or other compensation actually or **allegedly** earned by, billed by, or due to an Insured or the structure or reasonableness of any compensation, including without limitation, any Claim alleging Churning.
> - Nor do they cover punitive, exemplary or multiple Damages including Return, restitution, reduction, disgorgement, forfeiture or rescission of commissions, fees or premiums.

I support a customer's legitimate arbitration claim and do not want any part of this comment letter to suggest otherwise. There are, however, more and more harassment-based arbitration claims being filed by plaintiff lawyers who are looking for their easy paydays. They know that we all don't want any disclosures on our BrokerCheck record and they are so clearly using that as their leverage as they file their claims. Claims that, by the way, name everyone they can find using the firm name BrokerCheck search, even though the majority of (sometimes all of) the people named could not have been involved even if there had been a violation. FINRA and the States (NASAA) have unintentionally created this situation for all member firms, but especially for small firms, and these bad actor lawyers are really causing damage.

Haven't claimants been helped enough? Who is protecting member firms? Our industry needs some help from its membership organization and we need it now. Thank you for the opportunity to express my opinion and opposition to 18-22.

Respectfully,

John Parmigiani
President & CEO
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