Ms Mitchell

I had intended to dign Paige Pierce's letter to you, but was too late.

Please accept this same letter with my signature.

Respectfully

Laura Bley

9/24/18

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. Responding as a small firm member of FINRA, I oppose this proposed amendment.

The argument for adoption of this proposed amendment rests squarely, as expressed in a dozen or more plaintiff attorney comment letters, on the fact that disclosure of liability insurance coverage has been part of the Federal Rules of Civil Procedure for decades and, as such, should be further mandated in the FINRA Code. There is however a significant and meaningful problem with that argument and that is we

find a notable lack of correlation between the federal court system and the FINRA Arbitration Program that is the forum mandated for member firms and their associated persons.

It is an indisputable fact that FINRA members and associated persons do not enjoy the same Constitutional protections that other Americans do under the federal rules of civil procedure and federal rules of evidence found in the federal court system. For instance, the protections for defendants of litigation to have a case decided by a jury of their peers, the bifurcation of court proceedings dealing with liability and sanctions (v. liability and sanctions heard in ONE proceeding at FINRA), the ability to subpoena witnesses and documents in court (which we cannot do in a FINRA arbitration unless the parties to be subpoenaed are associated with a FINRA member), or to have the ability to exclude evidence traditionally believed to be unreliable, such as hearsay; none of these federal protections are afforded to FINRA member firms or their associated persons. Also, the right to move cases from the FIRNA arbitration system to federal courts is impermissible for FINRA member firms and/or their associated persons.

Further, unlike the federal court system, FINRA does not have an appeal process through which a party may challenge an award. This means that all awards rendered under the FINRA Codes are final and are not subject to review or appeal, except under very limited circumstances; the bottom line is FINRA does not hear appeals on arbitration awards. In small firms' collective experience, it takes a virtual act of Congress to have an arbitration award appeal granted. Keeping in mind, too, that even clear mistakes of law or fact will not necessarily justify an arbitration award being overturned. This is the significance of the term "binding" in binding arbitration and provides my concern for small firm rights, specifically when small firms are dealing with potentially less than reputable plaintiff attorneys who initiate meritless actions and file vexatious litigation that is so costly and harmful to small businesses.

It is vital that we seek to strike the right balance to ensure that defendants' rights to due process remain intact while preserving protections for customers. Providing plaintiff attorneys a home field advantage by which the architecting of the most financially damaging claim is certainly a reasonable possibility, when counsel KNOWS these small businesses cannot afford to avail themselves of a robust defense against these at times frivolous claims, does not advance fair and equitable due process for defendants.

Finally, there will be a commercial consequence to member firms of all sizes, but especially small firms because we cannot afford to self-insure ourselves, when insurance companies drastically raise their premiums in response to the effect of a rule amendment like this passing. Twenty small firms are, on average, going out of business each month and I would argue that it is incumbent upon all of to seriously consider the increased cost burden on small firms should this amendment pass.

Our economy is powered by small business. Our future job growth depends on small businesses. Our future economic prosperity and competitiveness depends on the ability of our small businesses to innovate and grow into industry leaders. As someone who has owned and operated small businesses for the majority of my career, it is hard to see how due process of a small firm defendant is protected by this proposed amendment and I therefore submit this comment letter in opposition to 18-22 and request that FINRA and its board also reject this proposal.

Laura Bley

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