Via Email Only

Jennifer Piorko Mitchell
Office of the Corporate Secretary, FINRA
1735 K Street, NW
Washington, DC 20006-1506
pubcom@finra.org

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

Dear Ms. Mitchell:

I am an attorney representing investors in disputes with the financial services industry. For claims relating to FINRA-registered broker-dealers and their associated persons, I represent claimants in FINRA Dispute Resolution. The opinions expressed in this letter are my own.

Pursuant to Rule 12506 of the Customer Code, the Discovery Guide List items are "presumed to be discoverable in all arbitrations between a customer and a member or associated person," and generally must be produced within 60 days of the date the answer is due. Based in part on recommendations by FINRA's Dispute Resolution Task Force, the proposed change would create an additional List 1 item for certain insurance information.

I support the creation of an additional List 1 item for insurance information that, if requested by claimant, must be provided. I also applaud FINRA for continuing to consider and act on the recommendations of the Dispute Resolution Task Force.

As RN 18-22 notes, the Federal Rules of Civil Procedure and some states' civil procedure rules already require the production of insurance information in federal and state civil cases. *See e.g.* Oregon Rule of Civil Procedure 36 B(2); Washington Superior Court Civil Rule 26(b)(2). Customer claimants, having already filed their claim in FINRA arbitration, should not be denied this important part of discovery for case preparation. Insurance coverage information is necessary for effective meditation or other settlement negotiation.

Accurate information about the extent of coverage is critical. Mirroring what federal and state courts expressly identify, the new List 1 item should include the complete insurance policy, including but not limited to declarations pages, coverage denial, and reservation of rights.

I strongly encourage FINRA to emphasize in arbitrator training materials and the Arbitrator's Guide the presumed discoverability of Discovery Guide List items. In particular, there is no valid argument against production of the proposed List 1 responsive insurance information. If a customer claimant must file a motion to compel production, arbitrator training should emphasize allocating the costs associated with that motion and, if applicable, arbitrator decision to the improperly objecting respondent.

Sincerely,
Darlene Pasieczny