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September 24, 2018

VIA EMAIL

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

Email: pubcom@finra.org

Re: Regulatory Notice 18-22; Proposed Amendment to Discovery Guide to Require Production of Insurance Information

Dear Ms. Mitchell:

I write this letter in support of FINRA's proposed amendments to the Discovery Guide to require the production of insurance information when a claimant requests that information. FINRA adoption of this amendment will continue to help protect investors, which is one of FINRA's primary mandates.

Silver Law Group and I have been involved in the FINRA/NASD process for over 20 years. I have represented clients on both sides of the aisle. However, for the past 15 years, I have primarily represented aggrieved investors. My firm and I have represented investors in hundreds of FINRA arbitration cases. In addition, I am Chairman of the Securities and Financial Fraud Group of the American Association of Justice.

One of FINRA's biggest issues rights now is unpaid arbitration awards. Many investors spend months – and in some cases years – incurring financial and time costs litigating cases just to find out in the end that the brokerage firm will be closing up shop, is insolvent, and/or has no intention to satisfy an arbitration award. In many cases, the firm's principals are able to transfer to a new brokerage firm, leaving defrauded investors with no recourse. The requirement for insurance information could help to address this issue in several ways.

Production of insurance policies early on in the FINRA arbitration process will result in less waste. Fewer cases will be filed or pursued to the end if there is knowledge that a particular brokerage firm does not have insurance or other resources to pay a claim. This will save customers the costs necessary to prosecute a claim and, consequently, result in fewer unpaid awards. Further, in some cases, the required disclosure of any insurance policy might provide an additional avenue of recovery that otherwise may be hidden due to brokerage firm executives' ulterior motives.

Knowing the terms of an insurance policy can have a significant impact on whether or not an aggrieved investor's claims will be covered and in what amount. This not only benefits the customer but also the member firm. FINRA member brokerage firms pay significant premiums in many cases for these policies. Like many insurance policies, these policies may have limitations and exclusions that can result in the policy not applying to a claim based on how it is pled or addressed during the hearing. When an insurance policy does not apply to a customer claim, both the customer and the brokerage firm lose. The customer misses out on compensation if the insurance company denies the claim and the brokerage firm does not have additional funds to satisfy the claim. The firm loses the opportunity to get value from the policy it paid for. Additionally, if the brokerage firm does not have additional funds, it may be forced to go out of business. This is a lose-lose for both parties. If insurance policy information is disclosed early on in the process, the customers' attorneys can prosecute the claim in a manner in which it can be covered by the policy, resulting in value for bother brokerage firm and the customer and decreasing the number of unpaid arbitration awards.

The new Discovery Guide item's language deals with any potential criticism, too. The new rule addresses any potential prejudicial effect on the arbitration panel by extremely limiting instances in which arbitrators can be made aware of an existing insurance policy (or lack thereof). Disclosure of insurance coverage is limited in the same manner settlement negotiations are limited. Further, FINRA has proposed sanctions for unauthorized disclosures of insurance information to the arbitrators, which is sufficient deterrent to prevent any abuses.

This is not an unreasonable requirement. Many jurisdictions require the production of this same information. For example, in the State of Florida, Florida Statute § 627.4137 requires parties to disclose the name and coverage of each known insurer, and to provide for each insurer:

> " … a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:
>
> (a) The name of the insurer.
> (b) The name of each insured.
> (c) The limits of the liability coverage.
> (d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
> (e) A copy of the policy."

Adopting this rule will only bring the FINRA arbitration process in line with most other state and federal courts across the country. Many of the commentators who disagree with the adoption of this rule, perhaps ironically, have stated that their firm has dropped insurance coverage due to how expensive it is. Therefore, this proposed rule will have no additional burden on them. Most of the comments against the rule raise red herring arguments illogically arguing that disclosure of insurance will increase frivolous claims. There is zero empirical evidence to support this claim. The unfortunate reality is that the vast majority of firms with a history of

FINRA arbitration or regulatory issues attempt to manipulate the process to deny paying any FINRA awards.

Lastly, in regards to what document(s) should be provided, a complete copy of the policy or policies should be produced with any amendments or riders which may provide coverage for any claim asserted in a statement of claim, including any insurance company letter denying coverage or providing a defense under a reservation of rights.

In conclusion, my firm and I strongly support the implementation of the proposed new rule as proposed in FINRA Notice 18-22 and implore FINRA to adopt it as soon as possible. A swift implementation is in the best interest to protect customers and firms as well as the integrity of the FINRA arbitration process. As an investors advocate and frequent representative of investors in securities arbitration claims, I see no logic in allowing a brokerage firm to withhold documents which are routinely ordered to be produced in state or federal cases for a host of good reasons.

Respectfully submitted,

Scott L. Silver

SLS/jh
Enclosures