VIA ELECTRONIC MAIL: pubcom@finra.org

September 24, 2018

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
The Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 18-22: Request for Comment on Proposed Amendments to Its Discovery Guide to Require Production of Insurance Information in Arbitration Under Rule 12506.

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on Regulatory Notice 18-22: Request for Comment on Proposed Amendments to Its Discovery Guide to Require Production of Insurance Information in Arbitration under FINRA rule 12506. Cambridge understands this amendment is intended to promote consistency among arbitration proceedings by requiring disclosure of information relating to insurance policies obtained through third-party carriers during the discovery phase of a customer arbitration proceeding.

Cambridge supports implementation of thoughtful, well-crafted, and clearly understandable rules and commends FINRA's efforts to achieve that goal. Cambridge also supports FINRA's goal of protecting the investing public. Cambridge believes, however, this measure may have unintended negative consequences. Instead of helping the investing public, this requirement could potentially hurt the investing public and the member firms who seek to serve them. As such, Cambridge does not support the proposed amendments to FINRA's discovery guide to require production of insurance information in customer arbitration proceedings.

Per Regulatory Notice 18-22, FINRA's Dispute Resolution Task Force concluded that insurance information would be beneficial to customers in arbitration proceedings, and that most state and Federal civil proceedings expressly provide for the production of insurance coverage information during discovery. Further, attorneys who represent customers have stated that they believe that having knowledge of possible insurance, if any, would make them better able to advise their clients and determine a litigation strategy. While these points may be true, the existence of insurance coverage is not typical of the type of information parties are required to disclose in an arbitration proceeding and does not bear on the determination of liability.

The proposed regulation would align FINRA's discovery requirements with the Federal Rules of Civil Procedure which provide that liability insurance policies be made available for inspection and copying. The proposed regulation states that although insurance information may be discoverable, it would not be admissible. Cambridge agrees that this aligns with the Federal Rules of Evidence, which state that the disclosure of insurance information does not thereby render such information admissible in evidence. Thus, Cambridge understands that FINRA's proposed amendment would align with these federal rules, and the state rules which follow them, governing civil proceedings.

FINRA arbitration, however, is not a civil proceeding. Instead of heavily weighing civil procedure rules in consideration of amending the requirements of the Discovery Checklist, FINRA should consider the American Arbitration Association ("AAA") rules as a more informative resource of typicality in arbitral proceedings. In an arbitration proceeding under AAA rules, the parties determine which documents will be discoverable by mutual agreement, however, those documents must bear directly on the determination being sought. AAA rules state that "[t]he parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute." The AAA's rules requiring discovery of only that which is relevant to the determination of the matter conform with the purpose of arbitration, which is to focus on the issue of liability, not on a party's ability to cover the cost of an award. Requiring production of insurance documents adds to the complexity of arbitration and is contradictory to its purpose.

Cambridge recognizes that production of third-party insurance carrier coverage that could be utilized to sustain a customer's monetary award would be helpful to the customer's attorney. Insurance information, however, is not relevant because it does not have any tendency to make liability of a member firm or registered person more or less probable than it would be without the information. Customers file for arbitration when customers feel wronged and believe that a registered person or member firm is responsible for that wrong. Although prior knowledge of the existence or non-existence of insurance coverage might go towards whether or not the customer will be compensated following a favorable award, it does not bear on the issue of liability. Liability is determined by a focused review of the actions of the parties, it is a facts and circumstances determination. Implementation of this rule may impact an attorney's zealous advocacy of her client dependent on the level of the perceived ability to pay any award instead of proving liability and

going to the root cause of the problem. Additionally, heavy consideration of monetary awards ignores other FINRA remedies such as sanctions, suspensions, heightened supervision, and additional measures which could possibly be ignored for lack of monetary remuneration. Thus, this measure could in actuality be antagonistic to customer protection. It is possible that actions against member firms or registered persons who do not have coverage or who are self-insured would decrease or cease to occur because a customer attorney might have no incentive to aid any attempt to arbitrate. Additionally, it could drive member firms to drop insurance policies obtained through third-party carriers. This is evidenced by some of the existing 18-22 comments that state that the attorneys would rather spend their time going through arbitration against a member firm or registered person who has coverage rather than waste time on those who do not have coverage. It is apparent these respondents want to know about the payout amount so they can determine whether or not to proceed with the action. There seems to be little concern on their end regarding any determination of liability of bad actors. The comments raise the question: If an attorney knows there is no insurance coverage to pay an award, will the attorney take the case? Gradually, arbitration claims against bad actors without insurance coverage may simply cease.

Cambridge believes that investor protection is about protecting all investors, not just investors dealing with the big firms or firms with third-party insurance coverage. There is more to FINRA arbitration than simply monetary awards and justice served through the arbitral process shapes how we conduct our business. It should not become the case that those member firms without sufficient assets to cover an award or without third-party insurance coverage become essentially judgment proof because they are simply viewed by customer attorneys as unlikely to payout – this protects no one.

Finally, if implemented, Cambridge requests that disclosure of coverage be limited to the Declaration Page of the insurance policy only, and that certain information relating to the policy number, payment terms, and other transactional information relating to the insured's negotiated agreement with the insurer be subject to redaction.

Cambridge would be happy to further discuss any of the comments or recommendations in this letter with FINRA.

Respectfully submitted,

// Seth A. Miller

Seth A. Miller
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