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

Re: Regulatory Notice 18-22

Dear Ms. Mitchell:

I write in support of the proposed amendment to the Discovery Guide to require routine disclosure of liability insurance coverage by broker/dealers who are thinly capitalized or not self-insured. I have represented investors in FINRA arbitration for more than 25 years, and I frequently have dealt with the problem of insufficient and inaccurate information regarding insurance coverage.

The existence and scope of bd's liability insurance policies is critical information for attorneys in cases where the respondent firm is thinly capitalized. The unfortunate reality is that many member firms and associated persons are financially unable to satisfy arbitration awards. In too many cases, the ability to pay an award is an essential consideration when advising clients on whether to go to hearing or settle, and whether a settlement proposal from either side is fair and reasonable under the circumstances. Without that critical insurance information, we are operating in the dark. We are put in a position where we have to advise clients on what may be the most important financial decision in their lives without knowing one of the most critical facts. That untenable position is inconsistent with FINRA's “Investor Protection” mandate.

This notice will also help prevent B/Ds from threatening bankruptcy or from filing Form BDW in the face of customer complaints, in the event there is coverage. If insurance information is disclosed to the claimant’s attorney in discovery, then appropriate actions can be taken to protect the rights of the claimant with coverage counsel. The least FINRA can do is to require

its members to disclose the information about liability coverage, if it exists. Disclosure of liability insurance coverage has been part of the Federal Rules of Civil Procedure and most state discovery codes for decades.

This debate has nothing to do with encouraging claims or using the existence of insurance coverage as evidence of some sort of wrongdoing. The disclosure of insurance information has no bearing upon the legitimacy of the underlying claims. The new rule recognizes that presenting insurance information to the arbitration panel could be prejudicial and therefore sets very strict guidelines on the limited ability to make the arbitrators aware of an existing insurance policy.

Thank you for your consideration, and please contact me if you have questions or if I can provide additional information.

Sincerely,

John J. Miller
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