

September 24, 2018

Ms. 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. 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 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 few dozen 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 in that I find a lack of correlation between the federal court system and the FINRA Arbitration Program 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 or to have the ability to exclude evidence traditionally believed to be unreliable, such as hearsay, are not afforded to FINRA member firms or their associated persons. Also, the right to move cases from the FINRA 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

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Page 2

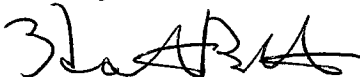
concern for small firm rights, specifically when small firms are dealing with potentially less than reputable plaintiff attorneys who initiate meritless actions and file vexatious litigation that is so costly and harmful to small businesses.

I think 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 FINRA defendants.

Finally, there will be a negative 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 passing of a rule amendment like this one. Twenty small firms are, on average, going out of business each month and I would argue that is incumbent upon all of us 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 respectfully submit this comment letter in opposition to 18-22 and request that FINRA and its board also reject this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harriet Britt', written in a cursive style.

Harriet Britt
Chief Compliance Officer
Union Square Advisors LLC