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September 20, 2018

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

Re: Comment on Proposed Amendment to Discovery Guide to Require Production of Insurance Information (Reg. Notice 18-22)

Dear Ms. Mitchell:

I write in support of the proposed amendments to the Discovery Guide to require the production of insurance information when requested by claimants. By way of background, I represent investors in customer cases as well as registered representatives in industry disputes.

The existence and scope of liability insurance policies is crucial information for attorneys to consider when advising their investor clients where the respondent is not highly capitalized or self-insured. The unfortunate reality is that many members firms and associated persons are financially unable to satisfy arbitration award. Indeed, FIRNA recognized the unpaid arbitration aware issue and published a paper this year stating that "FINRA has been focused on this important issue for many years in the context of the arbitration forum that FINRA operates for the resolution of disputes between customers and FINRA members or their employees." FINRA Perspectives on Customer Recovery (Feb. 8, 2018).[1]

In too many cases, the ability to pay is essential consideration when advising clients on whether to go to hearing or settle, and whether a settlement proposal form 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.

The proposal would do nothing more than put parties in customer disputes on the same playing field that exist in many states. For example, New York and New Jersey have almost identical requirement to produce the contents of insurance policies in disputes:

[1] http://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf

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> A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreements is not by reason of disclosure admissible in evidence at trial. For purposes of this subdivision [or "paragraph" in New Jersey], an application for insurance shall not be treated as part of an insurance agreement. N.Y. C.P.L.R. 3101(f); N.J. Rules of Court, Pretrial Discovery, R. 4:10-2(b).

FINRA asked for a comment on what documents would satisfy the proposed rule, and the answer is simple: a complete copy of the policy itself, including any amendments and riders.

I agree that in most cases, the existence or insurance should not be admissible as evidence in the hearing, and the proposed rule adequately addresses that issue. Any concerns that unscrupulous lawyers will make arbitrators swear of policies that are produced are misplaced. Inadmissible insurance information is no different from inadmissible settlement discussions.

The required disclosure of insurance information from non-highly capitalized and self-insured firms is long overdue. The proposed rule should be adopted.

Thank you for your consideration.

Sincerely,

Brent A. Burns