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VIA ELECTRONIC SUBMISSION

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:

The Investor Rights Clinic at the Elisabeth Haub School of Law at Pace University, operating through John Jay Legal Services, Inc. (PIRC),¹ welcomes the opportunity to comment on FINRA's proposed amendments to its Discovery Guide to require firms and associated persons, upon request, to produce documents concerning third-party insurance coverage in a customer arbitration proceeding. The proposed amendments would strictly limit the circumstances under which insurance coverage information could be presented to the arbitrators. PIRC supports the proposed amendments, as they should lead to improved fairness and efficiency in the discovery process.

The Document Production Lists in the Discovery Guide supplement the discovery rules in the Code of Arbitration Procedure for Customer Disputes by enumerating the documents that are presumptively discoverable in customer cases. Currently, the Firm/Associated Persons Document Production List does not include insurance information. The FINRA Dispute Resolution Task Force recommended that FINRA amend this list to provide for the production of insurance policies that may be applicable to a customer's claim.

To address industry concerns regarding the production of insurance coverage information when it is unwarranted, FINRA limited the proposed amendments so they do not require that insurance coverage information automatically be produced in every case; rather, they require that

¹ PIRC, which opened in 1997, is the nation's first law school clinic in which law students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes. See Barbara Black, *Establishing A Securities Arbitration Clinic: The Experience at Pace*, 50 J. LEGAL EDUC. 35 (2000); see also Press Release 97-101, Securities Exchange Commission, *SEC Announces Pilot Securities Arbitration Clinic To Help Small Investors – Levitt Response To Concerns Voiced At Town Meetings* (Nov. 12 1997), available at <http://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

customers request this information. Further, to address industry concerns regarding potential prejudice if an arbitrator learns about insurance coverage information, the proposed amendments limit a party's ability to submit evidence relating to insurance coverage at a hearing by requiring the party wishing to submit such evidence to demonstrate to the arbitration panel that: (1) there are extraordinary circumstances warranting admission of the insurance information; or (2) the existence of an insurance policy is directly related to the dispute outlined in the statement of claim.

PIRC supports the proposed addition of the new list item regarding insurance coverage information and agrees with FINRA's reasons for its inclusion. First, the proposed amendments would allow customers to make more informed decisions on litigation and settlement strategies and allow their representatives to better advise them on such matters. Currently, customers often operate in the dark when deciding whether to settle because they lack the insurance coverage information needed to determine whether a firm will be able to pay a potential award. This is particularly true in cases involving undercapitalized firms or associated persons with multiple proceedings pending against them.

Second, the proposal should result in fewer customer motions to compel production of insurance coverage information and more consistent arbitrator rulings on the subject. Currently, since insurance coverage information is not presumptively discoverable as part of the firm/associated persons list, customers expressly must request such information outside of the automatic exchange. Parties receiving these requests often object, thereby leading customers to seek an arbitrator's order for production. Moreover, the exclusion of insurance information from the list can lead to inconsistent arbitrator rulings on whether firms and associated persons must produce such documents. Adding insurance coverage information as presumptively discoverable effectively addresses both of these concerns.

Thus, PIRC supports the proposed amendments as they should improve the fairness and efficiency of the discovery process during the initial document exchange, as well as streamline and harmonize the resolution of subsequent discovery-related disputes and their outcomes.

Respectfully submitted,

Pace Investor Rights Clinic

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