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September 6, 2018

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary FINRA
1735 K Street, NW
Washington DC 20006-1500

Re: Public Comment on Finra Regulatory Notice 18-22

Dear Ms. Mitchell:

We are consumer attorneys who advocate for the rights of investors throughout the United States. We 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 nearly twenty years and have expended significant resources to just get firms to provide facts about their insurance coverage.

The existence and scope of liability insurance policies is essential information for attorneys to consider if they are to properly advise their investor clients in cases where the respondent 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 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. This insurance information is routinely provided in Court cases, without the need for a motion. 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 for decades, mandating

that coverage be produced. *See* Federal Rules of Civil Procedure 26(a)(1)(A)(iv).

This debate has nothing to do with encouraging claims or using the existence of insurance coverage as evidence of some sort of wrongdoing. Customers have a right to have their claims heard on the merits, and firms can defend the claims on the merits. Because there have been too many times that we have been unable to bring claims that were very justified but unlikely to ever receive payment on the arbitration award we expected, or where brokerage firms change names to avoid payment of an award, knowing the simple facts of insurance coverage will help us provide more accurate advice, resulting in a more efficient system.

We recommend the enactment of the proposal, and additional efforts to provide customers with a fair forum for the hearing of their claims.

Sincerely,

Joseph Fogel