FIRST ASSET FINANCIAL INC
Member SIPC
Robert Hamman, President

110 East Iron Ave.
Salina, KS 67401
(785) 825-5050
Fax (785) 823-9207

September 23, 2018

Mr. Kenneth Andrichik, Senior Vice President and Chief Counsel
Office of Dispute Resolution

Re: Comment on FINRA Notice 18-22

Dear FINRA:

Our firm opposes the proposed amendment put forth in Notice 18-22 generally requiring brokerage firms to produce information related to the E&O insurance of the firm to the plaintiff. The insurance should remain undiscoverable for the following are reasons:

-Showing a maximum amount of insurance may raise expectation of the plaintiff and plaintiff's attorney to a high level that may well be unobtainable due to lack of coverage that is not evident to the plaintiff or the attorney.
-Showing an amount of a policy might encourage an unscrupulous attorney (or non-attorney representative) to seek the amount of the policy without concern for a legitimate amount based on the perceived damage.
-There is a lack of correlation between the court system, where disclosure of liability disclosure has been present for some time, and FINRA arbitration. FINRA members and associated persons do not enjoy the same Constitutional protections as other Americans do under federal rules of evidence found in the federal court system.
-Many comments by plaintiff attorney's rests solely on the fact that disclosure of insurance has long been a part of the Federal Rules of Civil Proceedure. This is not an adequate basis for requiring disclosure in FINRA arbitration as the process is different and normally, there is not an assure appeal process to set aside an award.
-The amount of the insurance on the policy shown may not be available to the plaintiff at all. For example, attorneys in our area almost always charge "fraud" along with the "kitchen sink" accusations. Fraud is generally not covered by E&O insurance.
-Instituting such a policy as Notice 18-22 indicates could easily cause insurance companies to drastically raise insurance premiums. Such additional cost burden on small firms could cause them to either go out of business or cease using insurance coverage all together. Neither of the resulting consequences would be of benefit to plaintiffs.
-The E&O Insurance currently held and shown to a plaintiff may not even be applicable to a plaintiff's claim at all even if it was "in force" at the time of the arbitration. Unless the SAME INSURANCE Company's policy was in force at the time of the alleged violation and at the time of the filing of the arbitration, the policy will not cover the settlement, unless "tail coverage" was obtained. Also, even if the same company's policy is in force at the time of the allegation and the dates of the alleged violation, it will not cover the event if there was a "break" in the coverage unless "tail coverage" was obtained. Generally, the (same) insurance has to be in effect at the time of the alleged violation *and* at the time of the claim (which can be several years apart).

-There may not be a member on the arbitration panel who understands E&O insurance and its coverage.
-Showing the amount of E&O to the allegedly damaged client may create false expectation of the clients prior to the process or in dealing with an attempt to mediate or negotiate a settlement and, thus, impede the ability to mediate or negotiate a fair settlement.

For the preceding points, I, as an officer of a small member firm, respectfully request that FINRA and its board reject this proposal.

Sincerely,

Robert L. (Bob) Hamman
President & Chief Compliance Officer