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Via Email to *pubcom@finra.org*

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

Re: FINRA Regulatory Notice 18-22

Dear Ms. Mitchell:

Please accept this letter in support of FINRA's proposed amendments to the Discovery Guide to require the disclosure of liability insurance coverage by broker/dealers who are not highly capitalized and not self-insured. I have represented investors, broker-dealers, and registered representatives in FINRA arbitration for nearly 26 years. The disclosure of insurance coverage would facilitate the resolution and collection of awards by investors

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. In Illinois, there are statutory requirements for disclosure in some types of cases. (See 215 ILCS 5/143.24b). 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. 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 broker-dealers 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 Rule of Civil Procedure 26(a)(1)(A)(iv)).

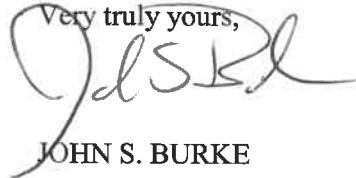
I believe that requiring the disclosure of insurance coverage in arbitration will also encourage responsible broker-dealers to provide adequate coverage for the foreseeable business risk of operating a broker-dealer. It will also serve disclose those broker-dealers who operate while being under-capitalized and under-inured or not insured. These types of broker-dealers cause the investing public who do business with them currently to incur unknown risk by doing business with the un/under-insured broker-dealer versus the responsible broker-dealer that obtains adequate insurance coverage of its

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business operations.

This disclosure of insurance coverage is likely to have no effect on the filing of claims, because the disclosure will not occur until after the claim is filed. Moreover, the existence of insurance coverage is typically not evidence of wrongdoing. Those arguments against this proposal are red-herrings. The policy would have no relevance to the legitimacy of the underlying claims. The new rule recognizes that presenting insurance information to the arbitration panel could be prejudicial and therefore sets very strict guidelines on the limited ability to make the arbitrators aware of an existing insurance policy.

For these reasons, and those of others in support of the proposal, I encourage FINRA to approve the amendments to the Discovery Guide Firm/Associated Persons Document Production List (Firm/Associated Person List) to require firms and associated persons, upon request to produce documents concerning third-party insurance coverage in customer arbitration proceedings. If you have any questions about any of the matters contained herein, please do not hesitate contact me.

Very truly yours,

JOHN S. BURKE