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September 5, 2018

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

Re: Regulatory Notice 18-22

Dear Ms. Mitchell:

Please support the proposed amendment to the Discovery Guide which would require routine disclosure of liability insurance coverage by broker/dealers who are thinly capitalized and/or not self-insured. I have represented investors in FINRA arbitration for nearly 20 years, which has been much more difficult by the secrecy about insurance coverage.

Knowledge of the existence and scope of insurance coverage is essential information for attorneys to properly advise investor clients when the brokerage firm is thinly capitalized. Unfortunately, many member firms and associated persons are financially unable to satisfy arbitration awards from their own resources. Indeed, I frequently tell clients that there are three essential elements to a successful claim. In addition to liability and damages, the two elements I learned in law school, there is a third and perhaps most important element: collectability. All too often, collectability becomes the central 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, investors and their counsel are operating in the dark. We lawyers must provide advice and our clients must make what may be the most important financial decision in their lives without knowing one of the most critical facts. That untenable position is contrary to FINRA's mantra of "Investor Protection."

This proposed discovery addition will also discourage broker-dealers with insurance coverage from falsely threatening bankruptcy or from filing Form BDW when presented with customer complaints. If insurance information is disclosed to the claimant's attorney early 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 any. Mandatory disclosure of liability insurance coverage has been part of the Federal Rules of Civil Procedure for decades, *see* Federal Rule *of Civil Procedure 26(a)(1)(A)(iv), and is also required by many, if not most state courts. *See, e.g.,* S.C. Rules of Civil Procedure 33(b)(4).

The requirement to disclose such basic information will not encourage baseless claims nor can the existence of insurance coverage be used as evidence of some sort of wrongdoing. Indeed, 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.

I therefore strongly encourage you to support the proposed Discovery Guide amendments to require the production of insurance coverage information.

If you have any questions about any of the matters contained herein, please do not hesitate contact me.

Sincerely,

WILLOUGHBHY & HOEFER, P.A.

s/ Elizabeth Zeck