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***From the Desk of Samuel B. Edwards***
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August 24, 2018

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

**VIA ELECTRONIC MAIL**
**pubcom@finra.org**

**RE:** ***Regulatory Notice 18-22; Proposed Amendment to Discovery Guide to Require Production of Insurance Information***

Dear Ms. Mitchell,

I write this letter is support of FINRA's proposed amendments to the Discovery Guide to require the production of insurance information when a claimant requests that information. As discussed in more detail below, this is a very necessary amendment to the FINRA rules and will help to protect investors, which is one of FINRA's primary mandates.

For a little background, my firm and I have been involved in the FINRA/NASD process for more than 25 years. We have represented thousands of investors from all over the nation as a part of that process. In addition, I am a member of FINRA's National Arbitration and Mediation Committee ("NAMC"), and have, as a result, been involved in studying this issue in greater detail and discussed it extensively with defense counsel for the brokerage industry.

The need for insurance information should be self-evident to those who participate in the forum. In fact, it is so self-evident in general litigation that third-party insurance information is a required disclosure item in the vast majority of state courts as well as federal courts. This is a particularly important issue in FINRA right now, where one of the most widely discussed issues is the problem with unpaid arbitration awards in FINRA arbitrations. Providing insurance information could help to address that issue in several ways. First, knowing that a particular brokerage firm does not have insurance or other resources to pay a claim will likely result in cases either not being filed or not being pursed until the end, which will save customers the money it takes to prosecute those cases and also result in fewer award that never get paid.

Second, knowing the terms of an insurance policy is very important in terms of what claims will be covered and in what amount. This is an area where the interests of the firms and the customers align. The firms pay massive premiums sometimes for these policies, but the policies have a number of limitations and exclusions that can result in the policy not applying to a claim based on how it is pled or addressed during the hearing. In such a situation, both the firm and the customer are losers. The customer often misses out on compensation as the insurance company denies the claim and no other funds are available to pay the claim. The firm misses out on getting the value of the policy it paid for and being

able to use that policy as it was intended (to pay customer losses and protect the firm from going out of business). Over the years, I have seen quite a number of cases where a policy existed, but it was never turned over to the claimants' attorneys. In the end, without the knowledge of that policy, the claimants' attorneys prosecuted the case in a manner that resulted in the policy not covering the claim and, after receiving a large award, the insurance company denies the claim and the brokerage firm eventually has to go out of business because it could not pay the claim. In that situation, everyone is a loser and requiring that the policy be turned over when requested could solve that problem (and, hopefully, decrease the number of unpaid arbitration awards).

While some of the commenters have said they were against this change in the Discovery Guide, virtually all of their criticism of the change has been addressed in the new rule. For example, 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. Other commenters against the proposal worry about "unscrupulous" attorneys in various ways. While this concern is baseless and largely unfounded, I again find that the proposed rule was crafted in a way that would address even those concerns, although I find them to be spurious, rather than legitimate arguments against this disclosure.

I agree, in particular, with the comments and statements from Mr. Robert Banks. He has been involved in the process for many years at both the representative and FINRA NAMC level and his rationale is very well articulated. In terms of what document should be provided, he is correct in noting it should be a complete copy of the policy itself. As outlined in the example above, knowing the exclusions and limitations in the policy is actually beneficial to both the customers and the firms and failure to have that understanding runs the risk of a customer making his/her claim outside of the policy coverage, which is beneficial to no one other than the insurance company.

Again, my firm and I strongly support the proposed new rule and urge FINRA to adopt in as soon as possible so as to better protect both customers and firms as well as the integrity of the FINRA arbitration process.

Thank you for your consideration.

Sincerely,

Samuel B. Edwards