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September 18, 2018

Via Email Only
pubcom@finra.org

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

Re: Regulatory Notice 18-22
Discovery of Insurance Information in Arbitration

Dear Ms. Mitchell:

I am a partner at Aidikoff, Uhl and Bakhtiari, a law firm devoted to the representation of individuals and institutions in disputes with Wall Street and the financial service industry. I am a former President of the Public Investors Arbitration Bar Association (PIABA) and the former Chairman of FINRA's National Arbitration and Mediation Committee (NAMC).

The purpose of this letter is to provide comments to the proposed addition to the FINRA Discovery Guide ("Discovery Guide") requiring brokerage firms to produce evidence of insurance in cases involving claims made by their customers.

In summary, the proposed Discovery Guide amendment is an important step towards modernizing FINRA discovery practice and leveling the playing field between aggrieved investors and the securities industry. Disputes determined in state or federal courts for years have required the production of information concerning insurance coverage to assist the parties in resolving disputes. This existence and scope of liability coverage is critical information for attorneys to consider in advising their clients about whether a broker-dealer has the ability to pay a FINRA arbitration award. This information is particularly important for investors because the present regulatory structure permits undercapitalized broker-dealers to offer financial advice and sell investment products to unsuspecting customers.

Question No. 1

The proposed amendments provide for the production of documents sufficient to provide details concerning coverage and limits of any insurance policy under which any third-party insurance carrier might be liable to satisfy in whole or in part an award. What type of documents should a

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party produce in order to comply with this requirement? What information contained in the documents, if any, should a party be allowed to redact before production to the other parties in the arbitration proceeding?

The documents produced must include a complete and unredacted copy of the policy along with any amendments or riders.

Question No. 2

The proposed amendments provide that a party must seek express authorization from the arbitration panel to submit evidence to the panel relating to insurance information. Under FINRA Rule 12212 (Sanctions), the arbitrators would be permitted to sanction 6 Regulatory Notice 18-22 July 26, 2018 a party for providing evidence of insurance information to the panel without seeking express authorization to do so. Should FINRA take any additional steps relating to sanctions if a party provides insurance information to the arbitration panel without express authorization? What steps should FINRA consider taking?

FINRA should not take any additional steps to amend the Code of Arbitration Procedure or Discovery Guide in connection with this proposal. FINRA should however, concurrent with the implementation of this amendment to the Discovery Guide inform arbitrators of the amendment along with providing guidance about its implementation and interpretation. FINRA can easily accomplish by way of a *Neutral Corner* article co-authored by a public and industry member of FINRA's NAMC Committee.

Question No. 3

What other rule requirements, if any, should FINRA consider to address a party's submission of insurance information to the arbitration panel without express authorization?

No other rulemaking is required.

Question No. 4

Are there any material economic impacts, including costs and benefits, to customers, firms or associated persons that are associated specifically with the proposed amendments? If so: a) What are these economic impacts and what are their primary sources? b) To what extent would these economic impacts differ by business attributes, such as size of the firm or differences in business models? c) What would be the magnitude of these impacts, including costs and benefits?

The primary impact is providing disclosure to aggrieved investors who are considering whether during a FINRA arbitration the perpetrator of wrongdoing has the ability to pay a FINRA arbitration award. The disclosure of insurance information will necessarily inform the parties and promote the settlement of claims. This addition to the Discovery Guide would positively affect all litigants and the forum by promoting economy in the dispute resolution process.

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Question No. 5

Are there any expected economic impacts associated with the proposed amendments not discussed in this Notice? What are they and what are the estimates of those impacts?

The Regulatory Notice addresses the material impacts of the proposal.

I urge FINRA to approve the proposed addition to the Discovery Guide on an expedited basis.

Very truly yours,

AIDIKOFF, UHL & BAKHTIARI

/s/ Ryan K. Bakhtiari

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