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September 24, 2018

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

Re:Comments on Regulatory Notice 18-22

Dear Ms. Mitchell,

We write in support of the proposed amendment to the FINRA Dispute Resolution Discovery Guide which would require the disclosure of liability insurance by broker-dealer firms in disputes brought in the FINRA Dispute Resolution forum.

We have devoted our practice to representing investors since the early 1990s, and are active in advocating for investor rights through the Public Investors Arbitration Bar Association, public speaking, and regulatory engagement through FINRA'S National Arbitration and Mediation Committee.

FINRA'S proposal is a welcome step forward in bringing the Discovery Guide a little closer to modern litigation practice. Insurance coverage has been a mandatory disclosure in both Federal and California state courts for decades. Finally, over the many objections of the securities industry (and the insurance companies that own many of the broker-dealer member firms), we are close to being able to obtain the basic insurance information that is easily available in other forums.

Many of the claimants forced into FINRA arbitration have been victimized by small broker-dealers selling high-risk, high commission products such as private placements, illiquid REITs, limited partnerships, and tenants-in-common real estate deals. When these products fail, they fail spectacularly often wiping out an investor's entire nest egg. The brokerage firms and brokers who sell such products are often thinly capitalized and spend the commissions faster than they are earned. When the market breaks, the wrong-doers are just as penniless as their clients.

Knowledge about the existence of a liability insurance policy is critical for a defrauded investor to decide whether to throw good money after bad and pursue the long, painful, and expensive slog through FINRA'S arbitration process.

If insurance information is disclosed in discovery, a claimant's attorney can act to protect the rights of the claim with coverage counsel regardless if the broker-dealer or broker threatens bankruptcy, shutting its doors, or simply disappears. Requiring disclosure of liability insurance policies is for all purposes the final investor protection mechanism available when due diligence, self-regulation, and securities laws fail. Knowledge of insurance coverage and its limits allows an investor to make an informed decision to pursue justice or walk away.

FINRA asked for a comment on what documents would satisfy the proposed rule, the answer is: a complete copy of all applicable policies, including any amendments and riders.

The securities and insurance industry's arguments that disclosing the existence of an insurance policy encourages claims or that unscrupulous counsel will use the existence of insurance coverage as evidence of some sort of wrongdoing are silly.

Insurance coverage is often limited in both time periods and always in amount. Adding more claims against a policy has the effect of rapidly depleting it. With small firms losing tens of millions of their clients' money with high-risk alternative investments, there is never enough coverage to pay losses. Instead claimants are forced to accept pro rata distributions of pennies on the dollar due to the number of claims and related expenses. If the securities industry was serious about limiting claims, it would not seek to conceal the existence of insurance, but would step up to accepting a fiduciary duty with its clients and stop selling toxic products.

The proposed rule recognizes that presenting insurance information to the arbitration panel could be prejudicial and sets strict guidelines on the limited ability to make the arbitrators aware of an insurance policy. Similarly, the existence of an insurance policy has no relevance to the legitimacy of the underlying claims. If the industry is so concerned that the arbitrators in its self-created and self-selected arbitration forum are unable to discern the difference between the existence of a policy and determining liability in a case, then it is time to do away with the pre-dispute arbitration clauses and allow customer disputes to return to the care of judges and juries.

We encourage the proposed rule to be filed with the U.S. Securities and Exchange Commission and swiftly adopted.

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

Sincerely,

/s/ Jonathan W. Evans

/s/ Michael S. Edmiston

JWE-MSE/mars