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August 22, 2018

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

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

Dear Ms. Mitchell:

I write in support of the proposed amendments to the Discovery Guide to require the production of insurance information when requested by claimants.

I have been a NASD, NYSE and FINRA arbitrator for over 16 years, and I have represented customers and registered representatives in the securities arbitration forum for longer. I also have represented broker-dealers in securities disputes.

The existence and scope of liability insurance policies is essential information for any attorney if they are to properly advise their investor clients in cases where the respondent is not highly capitalized or self-insured. The ridiculously low net capital requirements for member firms means 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 take case to hearing or settle, and whether a settlement proposal from either side is fair and reasonable under the circumstances. Without that critical insurance information, claimant attorneys must advise investors on what may be the most important financial decision in their lives without knowing one of the most critical facts. Such a circumstance is inconsistent with FINRA's "Investor Protection" mandate.

The proposal would do nothing more than put parties in customer disputes on the same playing field that exists in many states, and in federal court. For example, in my home state of Washington, insurance policies have been routinely produced in discovery for many years. Washington State Court Civil Rule 26(b)(2) provides:

> *(b)(2)* ***Insurance Agreements****. A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.*

Federal Rule of Civil Procedure 26(a)(1)(A)(iv) goes further in requiring that insurance policies be produced even without a discovery request:

> *Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.*

In my view, under the proposed rule, a member firm should provide a complete copy of the insurance policy, including any amendments and riders, and insurer reservation of rights or denial letters.

It is well understood – as reflected in the Washington rule above – that normally the existence of insurance should not be admissible as evidence, and the proposed rule adequately addresses that issue. Such a concern is not a valid basis to deny the proposed amendment.

The required disclosure of insurance information from non-highly capitalized and self-insured firms is years overdue, and should be adopted.

Thank you for your consideration.

Very truly yours,
VAN KAMPEN & CROWE PLLC

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