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By email to [pubcom@finra.org](mailto:pubcom@finra.org)

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

Re: *Special Notice on Transparency and Engagement (March 21, 2017)*

Dear Ms. Piorko:

Please accept these comments on the March 21<sup>st</sup> [Special Notice](#) soliciting public comments on a new enterprise-wide project examining transparency and engagement. As you know, I served as FINRA's Executive Vice President and Director of Arbitration from 1998-2013. I am an Adjunct Professor of Law at Fordham Law School, where I have taught a course on alternative dispute resolution since 1996. I'm also a member of the Board of Editors and a Contributing Legal Editor at the *Securities Arbitration Commentator*, and I'm a Certified Regulatory and Compliance Professional. Last, I am non-executive Chairman of the Board of Directors of [Arbitration Resolution Services, Inc.](#) of Coral Springs, Florida.

My comments focus on FINRA's Office of Dispute Resolution ("ODR"). My high-level view is this: *shedding light on the dispute resolution system enhances perceptions of fairness and is a good idea.* I believe strongly that perceptions of fairness, especially investor and employee perceptions, are improved by making public more information about the FINRA Dispute Resolution program. Let's face facts: FINRA handles over 99% of all securities arbitrations, and retail investors are almost always required to arbitrate disputes with their broker, as are securities industry employees. My comments are organized along the lines of the questions posed on page 23 of the Notice.

**HOW HELPFUL ARE THE TOOLS AND RESOURCES CURRENTLY AVAILABLE ON FINRA'S DISPUTE RESOLUTION WEB PAGE?**

The [Arbitration and Mediation](#)" part of FINRA's website is an excellent resource and aid to transparency. Here are some suggestions to improve it:

- *Make greater use of social media.* This comment is directed toward FINRA in general; ODR does a relatively good job in this area. For example, FINRA's use of Twitter is subpar. Days, weeks, and even *months* can go by between tweets, which is difficult to fathom given the scope of FINRA's activities.

- *Archive historical statistical data.* Right now, when the ODR statistics are updated each month, the previous month's statistics for the most part disappear. This makes it difficult to do research. For example, I recently attempted to ascertain how many arbitrators there were several years ago; it was virtually impossible to accomplish via the Website. The simple fix is to archive data as you do, for example, with press releases.

## **IF YOU HAVE ACCESSED THE AWARDS ONLINE DATABASE, HOW USER-FRIENDLY DID YOU FIND THE DATABASE?**

The Arbitration Awards Online database, which is free of charge to the public, is an excellent resource and aid to transparency. Here are some suggestions to improve it:

- *Add search check boxes.* Improve the web search function by adding boxes to check that correspond to the claim types and controversies reported in the published statistics.
- *Be able to easily search for explained awards.*
- *Shorten the lengthy fee calculation part of the typical award.* This part is often longer than the substantive award. The American Arbitration Association, on whose panel I serve, typically disposes of this in a single paragraph.

## **HOW ELSE MIGHT FINRA ENHANCE ITS DISPUTE RESOLUTION FORUM'S OPERATIONAL TRANSPARENCY?**

First, in January 2015 I blogged on transparency: [Sunlight is said to be the Best of Disinfectants](#). I was happy to see that several of my suggestions were since implemented, and acknowledged this publicly in December 2015: [Giving Credit where Credit is Due: FINRA Improves Dispute Resolution Transparency](#). I repeat below the remaining ideas and add some new ones.

- *Making public high level results of National Arbitration and Mediation Committee meetings*, just as FINRA does for its [Board of Governors meetings](#).
- *Airing "Recovery Rate Percentages."* To be clear, I think this is essentially a meaningless statistic. Courts are not judged by it, and it presumes that every claim asserted is 100% valid. Seth Lipner, a prominent investors' attorney and a past president of PIABA, published an article in 2006 demonstrating why it's an unsound measure.<sup>1</sup> Nonetheless, constituents should be permitted to judge for themselves. I trust FINRA to add the appropriate disclaimer. Also, other SRO arbitration fora such as the [National Futures Association](#), already do this.
- *Publish Aggregate Arbitrator Performance Data.* Individual arbitrator track records are already public for those willing to access FINRA Arbitration Awards Online and do the research or pay someone else to do it. However, I suggest that FINRA publish *aggregate* data. Toward the end of each case, FINRA asks participants to [evaluate](#) staff and

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<sup>1</sup> See Lipner, *Study of Arbitration Recovery Statistics*, THE NEUTRAL CORNER (June 2006)

*arbitrator* performance. It also asks arbitrators to [evaluate each other](#). I suggest FINRA periodically publish the compiled results. For example, questions address views on arbitrator professionalism, ability, knowledge, hearing conduct, and overall performance. Making public the aggregate responses would bolster perceptions of fairness.

- *Publish Aggregate ODR Forum Performance Data.* The same user survey asks parties to evaluate ODR's performance as administrator. That aggregate data, too, should be published.
- *Change the Award Information Sheet so it has "Yes" and "No" boxes* to check any for any element of relief sought that's a "Yes/No" question (for example, things like interest and attorneys' fees).

### **The Bottom Line**

Over one hundred years ago Supreme Court Justice Louis Brandeis said, "Sunlight is said to be the best of disinfectants." FINRA should open the Office of Dispute Resolution windows just a bit more to let more sun to shine in. In the end, the public will find there's not much that needs disinfecting.

Very truly yours,



George H. Friedman

cc: Richard Berry, Executive Vice President and Director of Arbitration  
Ken Andrichik, Senior Vice President and Chief Counsel