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Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006

Re: Comment on Regulatory Notice 26-06

I. Introduction

The undersigned submit this comment on behalf of a respondent in a pending FINRA industry arbitration proceeding. We thank FINRA for inviting comment from all interested parties. This comment does not come from a trade group or industry coalition. It comes from an individual whose family and finances have been affected by the use of FINRA's forum as a mechanism for competitive retaliation against a respondent, rather than to resolve a legitimate dispute.

We read Regulatory Notice 26-06 as a broad invitation to place the entire arbitration framework under a microscope. As FINRA noted, "comments need not be limited to the topics and questions FINRA identifies" in this Notice. We urge FINRA to consider the concerns raised below in connection with any revisions to its Dispute Resolution Services ("DRS") arbitration rules.

II. The Asymmetry Problem

FINRA's stated goal is a forum that is fair, efficient, and impartial for all participants. Respondents are participants. Yet the rules as currently structured can be used to limit competition and to impose costs on a respondent without any mechanism for early relief, where the claimant has little to lose and the respondent has no means to contain the damage.

The problem is most acute when the claimant is a repeat participant in the forum, one who has filed multiple claims over time and whose income from litigation activity is substantial.¹ For such a claimant, the cost of filing and maintaining a claim is low. For a respondent, often an individual or a small firm, the cost of defense compounds with each passing month, independent of the merits.

Where a claimant has previously filed materially similar claims and received an adverse ruling, the current rules create a further imbalance. FINRA treats arbitration awards as final and nearly unreviewable, yet imposes no corresponding constraint on re-filing. A framework that holds prior rulings binding for one party while allowing the other to set them aside does not treat participants equally or fairly.

FINRA has an opportunity in this modernization process to acknowledge that asymmetry and to ensure that any revisions to the arbitration rules account for its effect on respondents. We urge FINRA to weigh this concern across all areas identified in this Notice, from forum selection to motions practice to case management.

III. The Need for Accessible Early Relief

FINRA's rules on motions to dismiss and the authority of the Director of FINRA Dispute Resolution Services ("Director") under Rule 13203 to deny use of the forum are the principal tools available to industry respondents facing claims that lack merit. As currently structured and applied, neither tool provides meaningful protection.

FINRA's rules discourage prehearing dispositive motions, and the standard for granting them is high. For a respondent facing a claim filed without good faith basis, this means years of proceedings and compounding costs regardless of the merits. This Notice asks whether FINRA should "change the timing or expand the circumstances under which the panel may act upon a prehearing motion to dismiss." We answer yes, and we offer two additional recommendations.

First, FINRA should require the Director to conduct a recidivism review when any new industry claim is being considered for docketing. Where a claimant has filed multiple claims over a defined period and the pattern suggests a purpose other than legitimate dispute resolution, the Director should have clear authority, and a clear mandate, to act under Rule 13203 before the respondent is required to expend resources. Screening for recidivism at docketing costs little. The failure to screen can cost a respondent far more.

Second, the standard for prehearing motions to dismiss should be revised to permit dismissal where the record establishes that the claim is not being pursued in good faith or where prior adjudicated findings regarding the same claimant are on the record. The current rules provide no pathway for this relief.

¹In the proceeding underlying this comment, the pattern of the claimant's activity over many years suggests that the forum has served as a source of income rather than a mechanism for resolving genuine disputes. FINRA's current rules provide no basis for the Director or a panel to consider this pattern at the outset of a new proceeding.

In other areas of civil litigation, *res judicata* closes precisely this gap: a claim that has been adjudicated cannot be re-litigated. FINRA's own rules reflect a commitment to finality by making awards binding and nearly unreviewable on appeal. Extending a comparable principle to the front end, through the Director's docketing authority, would make that commitment evenhanded and would better serve the goal of a forum that is fair to all participants.

IV. Conclusion

FINRA's modernization effort is an opportunity to ensure that the forum works fairly for all participants, not only those who initiate claims, but those who must defend them. We ask FINRA to incorporate the concerns raised in this comment into its revisions to the DRS arbitration rules and to ensure that comments submitted by respondents and their counsel receive full consideration.

Respectfully submitted,

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