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May 1, 2026

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

Re: FINRA Regulatory Notice 26-06 - FINRA Requests Comment on Modernizing FINRA Arbitration Rules, Guidance and Processes

Dear Ms. Piorko Mitchell:

I write in response to FINRA's Regulatory Notice 26-06, published March 2, 2026, requesting comment on modernizing FINRA's arbitration rules, guidance, and processes. My law firm regularly represents clients who participate in FINRA's arbitration forum as respondents in customer disputes. As such, I appreciate the opportunity to share observations on behalf of my clients. My comments focus on two areas where reform is urgently needed: (1) the qualifications and quality of arbitrators serving on FINRA panels, and (2) the current restrictions on motions to dismiss that effectively prevent respondents from obtaining early dismissal of baseless claims and which often force settlement of these claims for economic realities unrelated to a claim's potential merit.

1. Arbitrator Qualifications, Classification, and Training

A. Current Qualifications Are Insufficient

The Notice observes that FINRA seeks to recruit candidates from a variety of backgrounds and areas of professional expertise and that previous legal experience is not required to serve as an arbitrator. Effective May 24, 2025, FINRA changed the employment and educational qualifications for new arbitrators such that applicants must have a four-year college degree and at least five years of full-time paid professional work experience, either inside or outside of the securities industry. While these updated requirements represent a modest improvement, they

remain inadequate to ensure that arbitrators possess the knowledge necessary to adjudicate securities disputes competently.

In my experience representing clients in FINRA arbitration, I am regularly presented with proposed arbitrator lists that include many individuals with no relevant experience in any field or course of study that would aid their decisions in these cases. It is not uncommon to receive lists populated with actors, technology professionals, healthcare workers, administrative assistants and others who, while likely very accomplished in their own fields, have no background that equips them to evaluate the complex legal and financial issues that arise in securities arbitrations. It is also becoming exceedingly more common that the majority of proposed public arbitrators have no prior award history, meaning they have never decided a case in FINRA's forum. Meaningful evaluation of these candidates is virtually impossible.

The Notice asks what the appropriate composition of the arbitrator roster should be and whether FINRA should be guided more by specific types of expertise rather than continuing to seek candidates from a variety of backgrounds. I strongly urge FINRA to adopt the latter approach. Arbitrators deciding securities disputes should, at a minimum, possess relevant professional experience in law, finance, accounting, or the securities industry. A general requirement of a four-year degree and five years of unrelated work experience does not ensure that the individuals making binding determinations in high-stakes financial disputes have even a rudimentary understanding of the subject matter before them.

The Notice further asks how FINRA should identify minimum employment, experience and educational qualifications that would assure a broad candidate pool while maintaining its decision-making quality. I propose that FINRA amend its arbitrator qualification standards to require that all arbitrators demonstrate relevant professional experience in at least one of the following areas: (a) the practice of law or a law-related profession; (b) finance or banking; (c) accounting or auditing; or (d) securities industry experience. These requirements would not unduly narrow the pool; rather, they would ensure that those who serve on panels are equipped to understand the claims and defenses presented to them.

B. The Ability to Strike All Non-Public Arbitrators Should Be Eliminated

Under current FINRA Rule 12403(c)(1)(A), each separately represented party may strike any or all of the arbitrators from the non-public list for any reason. This means that any party may ensure that the panel will have three public arbitrators by simply striking every non-public arbitrator from the list. In practice, this significantly reduces the pool of arbitrators with meaningful securities industry experience who can serve on any given panel.

The Notice asks whether FINRA should amend Rule 12403(c)(1)(A) to remove parties' ability to strike all the arbitrators from the non-public list for any reason. I believe it should. Non-public

arbitrators - those with current or previous associations with the financial industry - possess precisely the kind of subject matter expertise that leads to more informed and fair outcomes. FINRA has received feedback that its definition of public arbitrator excludes a wide range of professionals, including many that have only attenuated connections to the industry, which has the effect of eliminating many highly qualified individuals with subject matter expertise from the pool of public arbitrators. I wholeheartedly affirm this feedback as I often see very qualified arbitrators on the non-public list who are not in any sense "industry insiders." The unlimited ability to strike non-public arbitrators compounds this problem by removing the remaining experienced arbitrators from consideration. The result is panels composed entirely of individuals who may have no familiarity with the securities industry, its regulations, or the types of claims and defenses at issue.

Eliminating the blanket strike of non-public arbitrators would not deprive any party of a fair panel. The existing strike process for the chairperson and public lists already gives parties meaningful control over panel composition. Retaining some non-public arbitrators on panels would help ensure that at least one member of the panel has relevant industry knowledge, leading to more informed deliberation and better outcomes for all participants.

C. Enhanced Training Is Essential

The Notice requests comment on whether FINRA should implement additional training requirements on substantive elements of law or complex investment products for all arbitrators beyond the Basic Arbitrator Training Program. I strongly support mandatory enhanced training. The current Basic Arbitrator Training Program focuses on procedural matters and does not instruct on substantive issues. While maintaining FINRA's neutrality as an administrator is important, there is a significant difference between instructing arbitrators on how to decide a case and ensuring they understand the legal and financial concepts they will encounter.

2. Motions to Dismiss Should Be Expanded

A. The Current Framework Is Too Restrictive

The Notice acknowledges that motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration. Under FINRA Rules 12504 and 13504, a panel cannot act upon a prehearing motion to dismiss a party or claim unless the panel determines that: (1) the non-moving party previously released the claims in dispute by a signed settlement agreement or written release; (2) the moving party was not associated with the account, security, or conduct at issue; or (3) the non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits. These three grounds, while appropriate as far as they go, are far too narrow.

We understand that before these restrictions were imposed motion practice had become too frequent and costly. However, the implementation of these restrictions has amounted to an overcorrection. The practical effect of these restrictions is that a claimant's attorney can file a completely baseless claim that would not survive the initial pleading stage in a court and the respondent has virtually no mechanism to obtain an early dismissal. The only options available to the respondent are to take the case through a full hearing on the merits or to settle it, even where the claim is wholly without factual or legal basis. This dynamic creates a perverse incentive for the filing of meritless claims, because the filing party knows that the respondent will face the full cost of arbitration regardless of the claim's merit. The result is that firms and associated persons are effectively held hostage by the cost and burden of the process itself, creating pressure to settle claims that should never have been brought. Claimants know that almost all respondents will settle these claims if they can do so for less than the cost of defense through final. Because the cost of defense is often $100,000 to $200,000 or more, these settlements are often very lucrative for claimants and their counsel.

The Notice asks whether FINRA should change the timing or expand the circumstances under which the panel may act upon a prehearing motion to dismiss a party or claim. The answer should be an emphatic yes. The current framework was implemented following complaints that parties were filing prehearing motions routinely and repetitively in an apparent effort to delay scheduled hearing sessions. While preventing abusive motion practice is a legitimate goal, the pendulum has swung too far in the other direction. The existing rules make it nearly impossible to dismiss even patently frivolous claims before hearing.

B. Specific Reforms Are Needed

I propose the following reforms to the motions to dismiss framework:

First, the three existing grounds for prehearing dismissal under Rule 12504(a)(6) should be expanded. At a minimum, FINRA should add a ground permitting dismissal where the claim, on its face, fails to state a cognizable legal theory or is barred by applicable law. This would provide a basic safeguard against the filing of claims that have no legal basis, while still preserving claimants' rights to pursue meritorious claims. An often-seen example are claims brought solely against a broker-dealer for a representative's conduct wholly away from the broker-dealer firm, while making an investment recommendation on behalf of an unaffiliated registered investment adviser (RIA) to an individual who is not a customer of the broker-dealer. While my clients understand that they have a duty to supervise a representative's activities away from the firm, these suits are brought against broker-dealers only because of the ease of filing a FINRA action that cannot be dismissed as opposed to filing against the RIA in a court of law. Yet even when the broker-dealer properly supervised the activity, earned no compensation on the recommendation, and had nothing to do with the recommendation or customer, the broker-dealer

is forced to defend that matter all the way through hearing or to settle a baseless claim. This is inherently unfair and an abuse of the arbitration process.

Second, consistent with feedback FINRA has already received, the requirement under Rule 12504(a)(2) that motions to dismiss be filed only after the answer has been filed should be removed. Where the grounds for dismissal are clear - for example, where the respondent was not associated with the account, security, or conduct at issue - there is no reason to require the respondent to incur the expense of drafting an answer before moving to dismiss. Forcing respondents who were not associated with the account, security, or conduct at issue to hire a lawyer to arbitrate such a case serves no purpose, and efficiency and fairness demand that such parties be dismissed as early in the claim as possible.

To the extent FINRA is concerned about the potential for abuse of an expanded motion-to-dismiss framework, the existing safeguards against frivolous motions provide adequate protection. If a panel deems a motion to dismiss as frivolous, the panel must award reasonable costs and attorneys' fees to the party that opposed the motion, and the panel may issue other sanctions if it determines that a party filed a motion to dismiss in bad faith. These provisions, which already exist under current rules, are sufficient to deter the filing of baseless motions.

3. Conclusion

FINRA's arbitration forum serves an important function, and I commend FINRA for undertaking this comprehensive review. However, the two issues I have highlighted, the inadequacy of arbitrator qualifications and the excessive restrictions on motions to dismiss, significantly undermine the fairness and efficiency of the current system. Addressing these issues would benefit all participants in the forum and would strengthen public and industry confidence in FINRA's arbitration process.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

s/ Lori Patterson

Lori Patterson