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Via Electronic Filing (pubcom@finra.org)

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

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

Dear Ms. Piorko Mitchell,

The Cornell Securities Law Clinic (“Clinic”) submits this comment letter in response to FINRA Regulatory Notice 26-06, requesting comment on “Modernizing FINRA Arbitration Rules, Guidance and Processes.” The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural “Southern Tier” region of upstate New York. For more information, please see: <http://securities.lawschool.cornell.edu>.

As explained in greater detail below, the Clinic offers comment as to certain potential FINRA rule changes on forum selection, the eligibility rule, and punitive damages.

A. Forum Selection Questions A(i).2. and A(i).4.

- I. In response to question A(i).2. the Clinic opposes barring claims from FINRA forums based on “a certain complexity or value.”*

FINRA asked for comments on the following question: “A(i).2. Should FINRA no longer allow in its arbitration forum certain categories of claims (e.g., of a certain complexity or value). . .? What customer protection and fairness considerations should be part of evaluating this question?” Regulatory Notice 26-06 further describes “value” as a claim “seeking damages over a certain dollar amount,” and does not provide guidance on what is meant by “complexity.” Given the broad sweep of the question, the Clinic, in turn, offers a broad response.

FINRA should not structure access to its forums based on claim value. Whether a retail customer has a claim in the thousands, or the tens of millions, should not change the customers’ right to access a FINRA forum for arbitration.¹ Customers with higher monetary claims are not necessarily better positioned to adjust to alternate forums. While heightened financial losses may

¹ FINRA Dispute Resolution Services Arbitrator’s Guide, 7 (March 2026), available at <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>

in some cases reflect greater means, this may also reflect losses in higher proportions of net worth. FINRA's goal of promoting fair market practices should extend to all areas where retail customers are at risk of being taken advantage of.

Like claim value, FINRA should not draw an artificial distinction based on case complexity. A case may be complex for a variety of reasons, including deceptive practices by firms. Claimants in complex cases are not guaranteed to be more sophisticated than those in simple cases, so FINRA should not assume such claimants have less need of a FINRA forum. Discontinuing FINRA arbitration of complex cases creates an unnecessary distinction between claimants who may only differ in the level fraudulent practices used against them.

II. In response to Question A(i).2. the Clinic opposes barring claims from institutional investors in FINRA forums.

FINRA also asked for comments on the following question: "A(i).2. Should FINRA no longer allow in its arbitration forum certain. . . customer dispute types (e.g., those involving institutional customers or holders of institutional accounts)? What customer protection and fairness considerations should be part of evaluating this question?"

There is no doubt that institutional investors, for the most part, are in a far better position than retail investors to negotiate alternate forums and find adequate legal expertise for such alternate forums. However, FINRA should endeavor to retain oversight over all aspects of the financial markets thereby enabling it to have access to relevant case data and trends. Continuing to offer the FINRA forum for institutional investors promotes the goals of transparency, fair practice and adjudicator expertise by ensuring that FINRA has wide-ranging supervision over financial market practices.

III. In response to Question A(i).4. the Clinic supports allowing Customers to choose, post dispute, between arbitration and litigation regardless of whether they signed a customer agreement with an alternative forum selection clause.

FINRA asked for comments on following question: "A(i).4. Should customers be allowed to unilaterally choose, post dispute, between arbitration and litigation even if they signed a customer agreement with an alternative forum selection clause? Alternatively, should FINRA permit arbitration in its forum only where both parties agree to such arbitration post dispute? What fairness considerations should be part of evaluating this question?"

Customers and firms are not on equal footing when signing forum selection agreements. Retail investors often have neither the expertise nor the foresight to fully consider the rights they have in various forums and lack bargaining power. Guarantees of a choice between court and the FINRA forum, if desired by the customer, serve as a backstop to protect the customer by ensuring that they will have access to the preferred forum in which to bring claims.

B. Eligibility and Motions to Dismiss, Question B(i).4.

- I. In Response to question B(i).4. the Clinic recommends adopting a knowledge element in the eligibility rule in addition to the, “from the occurrence or event,” language.*

FINRA asked for comment on the eligibility rule: “B(i).4. Are there other approaches to the applicability of the eligibility rule that FINRA should consider?”

FINRA’s eligibility rule for customer cases, Rule 12206, currently states in pertinent part, “No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.” The Clinic proposes altering the language to state: “No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the later of either the occurrence or event giving rise to the claim, or the claimant having actual knowledge of the occurrence or event gives rise to a claim.”

This simple change to the language serves to simplify eligibility arguments and dissuade concealment of misconduct without overburdening firms. Parties will have less need to argue over whether the “occurrence or event” is the initial transaction, the finalization of a trade, a notification letter, or any other number of cognizable events that could be argued to give rise to a claim. Instead, arbitrators can simplify the task by evaluating when the claimant actually understood what had occurred with their account and that it gives rise to a claim. This will encourage disclosures by firms of acts that could lead to liability. This system also removes the fear that firms have of decades old cases resurfacing, as they can mitigate this result through increased transparency around actions taken with customer accounts.

C. Punitive Damages Questions H.1. and H.2.

- I. In response to Question H.1. the Clinic recommends that FINRA should maintain the current framework that allows arbitrators to award punitive damages.*

FINRA asked for comment on question, “H.1. Should FINRA maintain the current framework that allows arbitrators to award punitive damages?” This question was asked with the context that, currently, arbitrators may award punitive damages upon a party’s request, and that, “arbitrators must clearly specify what portion of the award is intended as punitive damages and include the basis for awarding punitive damages.”

There is no need for FINRA to alter the current system for punitive damages. As noted in the request for comment, punitive damages have only been included in 1,324 awards since 1988, or roughly 35 such awards per year. About 7% of FINRA cases involve claims for more than 1 million dollars and slightly more than 1% of cases result in awards above five million dollars. These numbers do not tell a story of claimants or arbitrators running amok with punitive awards. Rather, they show that arbitrators are hesitant to award punitive damages at all. Whatever fears firms may have regarding unfair punitive damages, these fears are not grounded in the reality of punitive awards over the last 38 years.

Punitive awards are an important tool for arbitrators to address egregious behavior. Prior comments have argued that arbitrators have other means of punishing poor behavior, such as

referrals for disciplinary proceedings.² Such arguments ignore the need for arbitrators to have multiple options, tailorable to specific circumstances, to deter bad behavior. Access to a hammer does not obviate the need for a screwdriver. Like the screwdriver, punitive awards are just one tool with which arbitrators can ensure fair outcomes and address bad behavior, and as noted above, it is a tool that has clearly not been abused by arbitrators.

II. In response to Question H.2. the Clinic recommends that FINRA should not permit parties to agree, in predispute arbitration agreements, to preclude or limit punitive damages.

FINRA asked for comments regarding predispute limitations on punitive awards: “H.2. Should FINRA permit parties to agree in predispute arbitration agreements to preclude or limit punitive damages? What customer protection and fairness considerations should be part of evaluating this question?”

Allowing predispute agreements that preclude or limit punitive damages would be out of step with the whole purpose of punitive damages. Punitive awards are rare, and they are used not to enforce the financial rights of parties, but to punish and deter exceptionally poor behaviors that go beyond a simple breach of duty.

As noted above regarding forum selection, the customers most likely to suffer from the loss of previously guaranteed FINRA rights are retail customers not sophisticated enough to know what rights they are giving away, or with not enough bargaining power to negotiate for different terms.

Conclusion

The Clinic supports maximum choice for customers as to forum, supports the addition of a knowledge requirement to the eligibility rule, and opposes reductions in access to punitive damages. These protections reflect the Clinic’s continued support of FINRA’s mission to protect customers and provide fair adjudication.

The Clinic appreciates the opportunity to provide the forgoing comments provided by Regulatory Notice 26-06.

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² SIFMA Recommendations for FINRA Arbitration, 4 (July 11, 2025)