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April 15, 2026

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

**Re: *Comment to Regulatory Notice 26-06***

To Whom it May Concern:

I am a securities attorney who for the past 8 years has represented investors in their disputes with brokerage firms and financial advisors, and prior to that I spent over five years representing brokerage firms and financial advisors at three different law firms. I also completed FINRA's arbitrator training, including chairperson training, in May 2024. Thus, I make these comments as someone who has had various perspectives of FINRA arbitrations.

**D.3. At initial panel selection, should each separately represented party strike and rank arbitrators, or should FINRA amend its rules to provide that all claimants, collectively, and all respondents, collectively, share the same number of strikes during arbitrator selection**

I firmly believe FINRA needs to amend its rules to provide that all claimants, collectively, and all respondents collectively, share the same number of strikes during arbitrator selection. Nine times out of ten, FINRA arbitrations are won or lost at the arbitration selection stage. Often multiple Claimants/Investors are represented by the same counsel and do not get additional strikes because there is more than one Claimant/Investor, but when there are multiple Respondents/Brokerage Firms they get twice as many strikes as the Claimants/Investors because they are represented by different counsel. In the criminal world multiple defendants must share their jury selection strikes, but in FINRA arbitrations each Respondent/Brokerage Firm (so long as they are represented by separate counsel) gets its own set of strikes. It leads to arbitration panels that favor Respondents/Brokerage Firms any time more than one brokerage firm is named. It also provides an incentive for Respondents/Brokerage Firms to work together to double the number of strikes they would otherwise have. This is an inherent flaw in the FINRA arbitration selection process and leads to arbitration panels that are more likely to favor Respondent/Brokerage Firms over Claimants/Investors.

**D.2. Should FINRA amend Rule 12403(c)(1)(A) to remove parties' ability to strike all the arbitrators from the non-public list for any reason? What customer protection and fairness considerations should be part of evaluating this question?**

No. FINRA should not amend Rule 12403(c)(1)(A) to remove parties' ability to strike all the arbitrators from the non-public list for any reason. The arbitrators on the non-public list are highly likely to have an industry bias since they worked in the industry. Forcing Claimants/Investors to have to rank any of the arbitrators on the non-public list creates additional bias against Claimants/Investors since almost every arbitrator on the non-public list worked or works in the industry and thus would not be inclined to rule against a potential future employer.

**B(i).2. Should FINRA amend the eligibility rule to expressly allow claims in FINRA's arbitration forum that arise from transactions or wrongful events that occurred more than six years prior to the claim being filed if, for example, there are ongoing damages or concealment of the harm? What fairness considerations should be part of evaluating this question?**

Yes. Often investors are not made aware of losses in their investments until many years after the investment is made. The investor may receive consistent distributions from an investment but not realize that they lost money on the investment until the distributions stopped more than six years later. There may have been warning signs that the brokerage firm should have been aware of when the investment was sold but the investor would not have any reason to investigate the brokerage firm's recommendation until the distributions stopped. Even when distributions stop within six years of the investment being sold, my clients have reported to me that their financial advisor would often reassuring the investor that everything is going to be fine, they just have to wait and everything will be alright. These are subsequent acts that prevent investors from knowing something is wrong, and FINRA should expressly amend the eligibility rule to allow for the consideration of ongoing damages or concealment of the harm. Any fairness considerations regarding the preservation of evidence or the passage of time effects both sides and would just be one more thing for arbitrators to consider when making their rulings.

**B(i).3. Should FINRA amend the eligibility rule to expressly provide that the rule is a statute of repose, barring claims based on securities transactions or wrongful events that occurred more than six years before a claim is filed? How would this approach affect claims related to a continuing occurrence (e.g., allegations of ongoing fraud starting with the purchase of a stock 10 years ago but continuing to a date within six years of the date the arbitration claim was filed)? What fairness considerations should be part of evaluating this question?**

No. For the same reason discussed in B(i).(2) above.

**C.2. What further changes, if any, should FINRA make to its arbitrator standards? How should FINRA identify minimum employment, experience and educational qualifications that would assure a broad candidate pool while maintaining its decision-making quality? For example, should FINRA accept equivalent professional certifications or specialized credentials in lieu of a four-year college degree?**

I would recommend moving the education requirement for public arbitrators back to an associated degree or even to a high school diploma. Jurors in court are not required to have a college degree to serve on a jury, and a college degree is not required to be an investor. If we are going to allow brokerage firms to take away court as an option from investors, then at the very least they should still be allowed to be judge by a jury of their peers. A complex court case can have a jury consisting of jurors who do not have a college education, so why should it be different for a FINRA arbitration. FINRA cases are not necessarily more complicated than anything that a jury may have to decide on. Sure, the chairperson's role is probably more

akin to a judge so I could see why you would someone with more education to run the arbitration, but the rest of the panel's role is more akin to a jury and thus does not need the same education requirement.

**C.1. What is the appropriate composition of the arbitrator roster in FINRA's arbitration forum for customer disputes and intra-industry disputes? Should the arbitrator rosters be the same or different? Should FINRA continue to seek candidates from a variety of backgrounds, or should FINRA be guided more by other considerations such as specific types of expertise?**

Frankly, I prefer not having an attorney on my FINRA panel because (1) I don't know if they are looking at the brokerage firm as potential future client, (2) the non-attorney are probably going to defer to the judgment of the attorney, and (3) attorneys often apply court rules and procedures that are not applicable in a FINRA arbitration. So yes, I think FINRA should continue to seek candidates from varied backgrounds. I have found that realtors and retirees (of all backgrounds) often have the flexibility in their schedule to serve as FINRA arbitrators.

**D.1. Should FINRA amend the definition of "public arbitrator" provided in Rules 12100(aa) and 13100(x) to modify or remove any of the criteria that disqualify an arbitrator from service as a public arbitrator to expand the public roster? If so, which criteria and why?**

No. Anyone who currently or previously had an association with the financial industry is most likely going to have an implicit bias in favor of the industry. Claimants/Investors should not have to be forced to rank someone with this implicit bias as one of their arbitrators. I would even go a step further and reclassify any attorney who has represented or is currently representing brokerage firms as non-public. An attorney in this position also has a bias in favor of the industry since they could be looking at the brokerage firm as a potential future client. I would even apply this to attorneys, such as myself, who have represented investors and brokerage firms.

**H.1. Should FINRA maintain the current framework that allows arbitrators to award punitive damages?**

Yes. Some acts warrant punitive damages and investors who are forced into FINRA arbitrations should not be denied this remedy. In practice, punitive damages are rarely awarded in FINRA arbitrations because arbitrators know that if they award punitive damages, then they will most likely be struck by Respondents/Brokerage Firms in future arbitrator rankings. It is an unfortunate reality of the arbitrator ranking process that some arbitrators will take into consideration whether they be selected for future panels if they issue an award that is too favorable to one side versus the other.

**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?**

No. These agreements are not negotiated at arm's length. They're often take it or leave it agreements that investors have no say in.

**J.2. Should FINRA consider amending its rules so that FINRA could remove awards from AAO or redact information from awards published on AAO? If so, in what circumstances would it be appropriate for FINRA to remove awards from AAO or redact information from awards published on AAO? What impact would such removal of awards or redaction of information from awards have on transparency into FINRA's arbitration process and the utility of displaying awards to parties and users of AAO? What customer protection and fairness considerations should be part of evaluating these questions**

FINRA should not remove awards just because an expungement has been granted. While an expungement removes the record from brokercheck, there needs to be a way for FINRA arbitration panels and investor attorneys to know if a broker has been accused of doing the same thing multiple times. This is relevant to establishing a pattern of behavior and is crucial for dealing with bad brokers. The truth of FINRA's expungement system is that these expungements are often uncontested because the case was settled, and there is often very little incentive for the Claimant or the Claimants' attorney to participate in the expungement hearing after the case settles. Just because a broker's record was expunged does not mean the broker was not guilty of wrongdoing. No one may have been there at the evidentiary hearing to provide evidence of wrongdoing. Accordingly, awards should not be removed from AAO simply because the broker's record was expunged.

**M.1. Are there any other FINRA rules, guidance, operations or administrative processes that should be updated or amended that would help ensure that customers, members and their associated persons are treated fairly and support an efficient and transparent arbitration forum? If so, what has been your experience with these rules, guidance, operations or processes and what are your suggestions for improving them?**

I would love to be able to bring actions against investment advisor in FINRA arbitrations. Many brokers are shifting their practice away from commission based to fee based to avoid FINRA regulations and arbitrations. FINRA arbitrations are a cost-effective way to deal with investor complaints, and financial advisors should not be able to make it harder to sue them by forcing investors to sue them in expensive arbitration forms such as AAA or JAMS. I once received an invoice from AAA for over $200,000 as a security deposit just to bring an investor action against a private hedge fund and the financial advisor who sold it to them.

**M.7. Is there any additional data that FINRA could provide to help inform discussion around the issues presented in this Notice?**

I would like to know the win rate for FINRA customer arbitrations where both parties are represented by counsel (i.e. ex

Very truly yours,

Epperson & Greenidge, P.A.

Andrew M. Greenidge, Esq.