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OF COUNSEL
ROBERT L. BLESSEY

Via E-Mail

May 8, 2026

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

Re: Regulatory Notice 26-06
Arbitration

Dear Ms. Mitchell:

This law firm represents numerous FINRA member firms and registered representatives in various matters, including FINRA Arbitrations, and has been a leader in representing the securities industry for over fifty (50) years. Please accept this letter as this firm's response to FINRA's request for comment on FINRA's arbitration process. We also thank you for the brief extension of time to accept this response.

We write because our experience in FINRA's arbitration forum has revealed serious structural deficiencies that the Notice presents a meaningful opportunity to address. While FINRA's arbitration forum was designed to provide a fair, efficient, and cost-effective alternative to litigation, in practice it has become a forum in which plaintiffs' attorneys systematically exploit procedural gaps to convert broker-dealers into insurers of investment performance and issuer conduct.

Indeed, in many respects what we now have before us is a forum that is the product of years of gaslighting by the plaintiffs' bar, a group of attorneys who allegedly promote the interests of public investors and supposedly support FINRA's mission statement, yet constantly seek to dumb down the process and make it as easy as possible to recover their 33%+ of any damages assessed by an arbitrator or panel, in the name of "investor protection." However, while FINRA Regulation's task is to protect the customer by protecting the markets, FINRA Arbitration is not charged to protect any particular group. It is intended to be a *neutral* forum where neither side is favored in the dispute resolution process, in order to bring about a *fair* resolution in less time and at less expense than in Court.

Therefore, a respondent (which is not always a large corporation, but may be a small family owned firm or a single individual representative) should not be prejudiced by being forced to go through an entire legal process and attend a hearing – often in a faraway location, and often still at significant cost – to defend a claim that is, for example, clearly barred by the Statute of Limitations merely because he/she/it/they was deprived of the right to file a Motion to Dismiss. Similarly, a Claimant should not need to be burdened by abusive motion practice or legal complexity to have a fair hearing of their dispute.

Setting aside the plaintiff attorneys' threats and rhetoric, including the notion that legislative efforts may shift FINRA's authority to the SEC in event FINRA does not continue to appease the plaintiffs' bar, we submit that the following comments and recommendations will assist FINRA in achieving the aforementioned balance in the interests of stakeholders by focusing on improving the overall fairness and efficiency of the forum, making it more predictable and acceptable to all participants.

A – Forum Selection

We are in agreement with SIFMA that FINRA should revise Rule 12200 to allow member firms to contractually agree to opt out of FINRA arbitration and arbitrate disputes in alternative fora with respect to claims: (i) seeking damages over a certain, high dollar threshold (with a specific amount to be defined); or (ii) involving counterparties that are considered "institutional investors" pursuant to Rule 2210(a)(4). Small claim or general investor concerns do not apply under such circumstances. Similarly, as discussed later in this correspondence, the same should hold true in event of a claim for punitive damages over a certain, high dollar threshold.

Additionally, we support amending Rule 12200 to allow member firms and customers to contractually agree to resolve disputes in alternative fora for claims involving certain categories of products, such as alternative investments and private placements. As pointed out by member firms, these products are complex and involve risk profiles, distribution structures, and issuer relationships that are qualitatively different from traditional brokerage account disputes. They are not well suited to adjudication by generalist arbitrators in a forum designed primarily for disputes involving publicly traded securities in retail brokerage accounts.

Finally, it is worth noting that such a right should be either only by agreement of all parties, or by option of *any* individual party. A Claimant should not have the *unilateral* right to supersede a forum selection clause otherwise requiring FINRA Arbitration. A contract must be binding on both sides, or not at all. It cannot fairly be binding to one party and not the other – especially when that party (Claimant) gets to choose what substantive rights the other (Respondent) will have in the dispute, such as the choosing of the decision maker, the extent of discovery, limitations on motion practice, *etc.*

B – Eligibility and Motions to Dismiss

(i) Eligibility

Of all the rules under consideration, this may be the one that deserves the most attention. Under the current rule, the outcome of a motion to dismiss for eligibility depends almost entirely on whether the arbitrator(s) consider the Rule to be a statute of repose, or a statute of limitation subject to tolling. And, in instances where the arbitrator or panel consider the Rule to be a statute of limitation, the outcome of the 12206 Motion is most often determined based upon the creativity of a plaintiff attorney in pleading the client's case, rather than facts actually proving that a wrongdoing took place within six years of the date the claim was filed.

Therefore, FINRA should clarify that Rule 12206 is a *jurisdictional* threshold beyond which a FINRA arbitration panel does not have the authority to make any decisions on the dispute. A claim older than six years is not necessarily foreclosed to a Claimant,[1] as such a claim can still be brought in Court, it simply means that a FINRA Arbitration Panel *will not hear* the case or make any decision on it. FINRA states in Regulatory Notice 26-06, "The original purpose of this time limit, or 'eligibility rule,' was to prevent aged claims from being brought into the arbitration forum and was informed by Rule 17a-4 under the Exchange Act, which generally requires broker-dealers to maintain records for at least six years."

Furthermore, we submit that eligibility should be resolved by the arbitrator(s) at an early stage, rather than requiring a moving party to incur the expense of answering the claim, and preparing for and attending the hearing. All too often, panels punt determining eligibility motions to dismiss until the hearing on the merits, rendering the entire motion useless – and negating the entire point of the rule, which is that FINRA does not have the authority to hear a case beyond the eligibility period.

FINRA has, in practice, repealed the rule through guidance, stating for example, in its Arbitrator Training Program, that "arbitrators should consider whether a continuing occurrence or event is giving rise to the dispute, such as when a customer may have purchased stock 10 years ago, but alleges ongoing fraud starting with the purchase which continued to a date within six years of the claim's filing date."

The original intent as a jurisdictional threshold, however, is in harmony with the (surprisingly extensive) case law on the topic.

[1] For example, Texas's elder abuse statute has a ten-year Statute of Limitations. Louisiana, Kentucky, and Rhode Island have statutes of limitations of ten years or longer for breach of written contracts. Some states' fraud claims do not have their statute of limitations run until discovery of the fraud, thus potentially extending beyond six years. Statutes of limitation can be tolled by agreement. Arguments regarding equitable tolling of a Statutes of Limitation based on certain Respondents' conduct can also be made.

FINRA's six-year eligibility rule "determines whether an arbitration panel has subject matter jurisdiction to consider a claim in the first instance" and "erects a barrier through which every potentially arbitrable claim must pass to be deemed eligible for an arbitration hearing." In other words, the six-year rule "goes to every power" of FINRA to arbitrate a claim and provides that it "has no jurisdiction over any claim submitted for arbitration more than six years after the 'event in dispute.'" *Reed v. Mut. Serv. Corp*., 106 Cal.App.4th 1359 (2003), *citing Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jana*, 835 F.Supp. 406, 410 (N.D. Ill. 1993).

Furthermore, Courts have uniformly held that FINRA Rule 12206 cannot be tolled until a claim is discovered (or for any other reason). In *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cohen*, 62 F.3d 381, FN 4 (11th Cir. 1995) (emphasis added) the Eleventh Circuit held "*Courts have concluded that* because section 15 [current FINRA Rule 12206] is an eligibility requirement rather than a procedural statute of limitations, *claims are not subject to equitable tolling*." *See also Edward D. Jones & Co. v. Sorrells*, 957 F.2d 509, 513 (7th Cir. 1992) *citing PaineWebber Inc. v. Farnam*, 870 F.2d 1286, 1292 (7th Cir. 1989), "In *PaineWebber*, however, we explicitly held that Section 15 [current FINRA Rule 12206], which defines which claims 'shall be *eligible* for submission for arbitration' (emphasis added), *is an eligibility requirement and not a statute of limitations and thus cannot be tolled*." *See also Painewebber Inc. v. Hofmann*, 984 F.2d 1372, 1381 (3d Cir. 1992), "Allowing 'claims' that are tolling or discovery arguments would permit a party to circumvent the contractual limitation of §15 [current FINRA Rule 12206] and thereby force a party to arbitrate a claim it never agreed to submit to arbitration."

At a minimum, we urge FINRA to establish specific detailed procedures relating to the eligibility Rule, even if FINRA continues to interpret the Rule to permit tolling (which it should not). For example, it should be mandatory that the Statement of Claim include the date of the subject investment(s), the name of the investment(s), and the date and a description of the act or omission giving rise to the claims.[2] Frankly, this sounds like common sense, but the claims filed with FINRA seldom include all this information. Further, FINRA should provide clearer standards for arbitrators in evaluating eligibility challenges.[3] These refinements would promote more consistent application of the rule, reduce unnecessary procedural disputes, and better align the arbitration process with principles of efficiency and fairness, while maintaining appropriate access for timely claims.

[2] This would address other common issues as well, such as a Claimant who brings an unauthorized trading claim without identifying the unauthorized trade, or a claim alleging unsuitable investments without identifying which investments are unsuitable, and when pressed in discovery to identify same will often respond along the grounds of "all of them."

[3] FINRA should clarify that a claim regarding the suitability of a purchase(s) accrues at the time of the purchase thereof; that a claim regarding a misrepresentation accrues at the time of the misrepresentation; that a churning/excessive trading claim is a single claim spanning the time period of the alleged abuse and thus does not accrue until the churning ceases, *etc*. FINRA should further clarify that no claim can ever accrue after an account is closed.

This law firm, and/or attorneys affiliated herewith while working for prior firms, has seen numerous cases where a claim obviously violates the FINRA eligibility rule, but the panel declined to dismiss and/or held the motion in abeyance pending the hearing (which is functionally no different), because the Claimant "threw stuff at the wall" to try to get something to stick.

For example, in FINRA Case No. 21-01289,[4] Decedent (Claimant was his estate) maintained several accounts with Respondent firm, but closed his final one in December 2014 (with the final trade being in November 2014). The Statement of Claim was filed in May of 2021 – 6 ½ years after his accounts were closed. However, Claimant's Statement of Claim identified incorrect dates for the opening and closing of Decedent's accounts (which were left in from another Statement of Claim filed by the same attorney, who refused to correct same despite the error being pointed out to him). In opposition to Respondent's Motion to Dismiss on eligibility grounds, Claimant additionally made several such arguments, including that Covid tolled the Eligibility Rule (despite Covid not even having tolled Statutes of Limitation in Claimant's home state), that Claimant's attorney needed more time to prepare a P&L because of Respondent's dilatoriness in providing statements to the executor (despite the fact that documentary evidence demonstrated that they were provided within one week of the request for same), that the Decedent's executor's appointment somehow tolled the Eligibility Rule, the Eligibility Rule is a mere "Guideline," *etc.* None of these arguments have anything to do with the "occurrence of the event giving rise to the claim." Nevertheless, likely because of all of the confusion, the panel ultimately reserved decision on the Motion to Dismiss until the hearing (which never occurred) – rendering the entire motion process moot and waste of the respondent firm's money in legal fees.

Another example is FINRA Case No. 15-00019,[5] where Claimant filed his claim six years and fifty-six days after the closing of his account (and six years and seventy-seven days from the final purchase therein). More than three years before filing the claim, Claimant consulted with Respondent's eventual counsel, who declined to take the case when learning who the intended Respondent was (or even to discuss it further) on the ground of conflict of interest, and referred Claimant to another attorney. After filing the arbitration, Claimant, again trying to see "what would stick," blamed his delay on Respondent's counsel for not informing him of the existence of the eligibility rule during their consultation more than three years prior. The panel denied the motion to dismiss.

These cases highlight the failures of the current Eligibility Rule, and the necessity to amend/clarify it to fulfill its intended purpose.

(ii) Motions to Dismiss

This firm is in agreement with SIFMA that FINRA should amend its rules to allow additional grounds for Motions to Dismiss, such as Statute of Limitations, and Failure to State a Claim.

[4] Because the matter settled without a public award, this firm will not disclose the parties' names.
[5] Because the matter settled without a public award, this firm will not disclose the parties' names.

In general, as FINRA recognizes the purpose of arbitration is to provide a "fair and efficient" (Regulatory Notice 26-06, p. 15) forum for determining disputes. It should *not* cause a party to lose substantive rights. Taking the most extreme example, if a claim is filed 5 years and 363 days after it accrued such that it is timely under the eligibility rule,[6] but there is no dispute that the claim is subject to a 3-year statute of limitations (as many states' negligence and/or misrepresentation statutes of limitation are), Respondent should not be required to arbitrate the matter through hearing to be allowed to raise the Statute of Limitations Defense. Respondent should be allowed to Move to Dismiss such an arbitration pre-hearing. Again using FINRA Case No. 21-01289 as an example, the Claimant's state law claims were all subject to a 3-year statute of Limitations, and the Rule 10(b)-5 Federal Securities Fraud claim was subject to a Statute of Limitations of no more than 5 years.[7] Every claim brought was afoul of the relevant Statutes of Limitations by *at least* a year and a half, but the Respondent was not even allowed to *argue* the point. Respectfully, not being allowed to argue the point is unfair.

Furthermore, having FINRA Rules explicitly distinguish between the 6-year Eligibility Rule and Statutes of Limitation both highlight the different purposes of the two rules. Within the six year eligibility period, the panel has the authority to make a decision on the merits on the claim (which may include that the claim violates the statute of limitations). Beyond six years, the panel has *no authority* to make *any* decision on the merits. Furthermore, such a distinction would eliminate the argument which is sometimes raised, that the FINRA Eligibility Rule becomes or supersedes the Statute of Limitations, regardless of what the law says. This is not the intent of the Eligibility Rule, nor is it within the power of FINRA to override state and/or federal laws.

An arbitration claim should also be subject to the barest minimum standard of stating a claim for which relief can be granted. A Respondent should not be required to arbitrate a matter until hearing in order to raise a defense that Claimant's claim, even if everything he said was true, has no merit. For example, this could result from a Claimant complaining about a profitable investment, in which he has no damages to recover, such as in *Metheney v. Network1 Financial Securities*, FINRA Case No. 19-02809. This should by design be a low threshold to meet, giving Claimant the benefit of every doubt, especially as many smaller cases may be filed *pro se*. Nevertheless, there are times where it should be able to be employed.

Furthermore, even in matters where the current rules permit a Motions to Dismiss, there should be a review and expansion of their usage to allow for more clear grounds to dismiss improperly named parties, or which relate to pre- or post- affiliation conduct. Company executives and compliance professionals, without any supervisory responsibilities relating to the matters at issue, are often named based solely upon their titles, creating unnecessary reputational risk and litigation pressure that is used as leverage in settlement discussions. Forcing

[6] This law firm is representing another Respondent which was filed on exactly this date.
[7] Rule 10(b)-5 claims are subject to a Statute of Limitations of 2 years from discovery of the facts of the claim, up to a maximum of five years.

broker-dealers and associates to go to hearing under these circumstances imposes unnecessary costs and burdens without advancing investor protection objectives. Moreover, early dismissal would reduce the settlement coercion dynamic that currently exists, which is most often the objective behind filing these types of claims.

For example, in *McCall v. First Standard Financial Company*, FINRA Case No. 18-04014, the arbitrator denied the Motion to Dismiss of three individual respondents, one who was not hired by the Respondent brokerage firm until after Claimant closed his account, one who was hired immediately before the account's formal closure but after every trade had already been made, and one whose *only* FINRA license was a Series 28 operations license – he was neither a registered representative nor a supervisor, and aside from clearly not being the representative on the account also maintained no supervisory or compliance oversight at any time (and Claimant provided no evidence or even allegation that he exercised any unlicensed supervisory authority). A decision like this should be subject to appeal, as discussed below.

C – Arbitrator Qualifications

This firm is concerned about having arbitrators with limited or no understanding of the securities markets being placed in a position to judge securities firms and representatives. One of the benefits of arbitration generally is that the decision makers are supposed to be well-versed in the fields in which they are hired to decide disputes. FINRA, however, has eviscerated this benefit by not only having at best a minority of arbitrators on a panel be from the securities industry, but by allowing any individual party in a customer arbitration (particularly Claimant) to single-handedly decide to have *no* industry representation on the panel at all.

Merit selection should be the primary factor driving FINRA to compile an arbitrator roster. Common sense dictates that all participants should want a prospective arbitrator to have the ability to evaluate facts and the law, including securities rules and regulations, and reach a fair decision that is void of any preconceived notions or personal ideology. It must be noted that we do not have a state or federal court judge overseeing the proceedings who will charge the arbitrator or panel on the applicable law. As such, there can be no similarity between potential jurors in any state or federal trial, and the FINRA arbitrator roster.

In many cases, particularly those involving more complex products or strategies, or the proper or improper action of a firm in complying with the rules, industry personnel are best suited for the determination of disputes. In a case dealing with complex products, it may well be that the arbitrators are actually the *least* knowledgeable people in the room on the topic.

By way of example, this firm recently pursued an expungement (FINRA Case No. 25-02387), where the concepts discussed included straddle options strategies, roll cost, backwardation and contango, and beta. Our client was, frankly, appalled that the people determining whether he is able to have a denied customer complaint removed from his CRD records likely will have no idea what he will be talking about, and that he will have to try to

educate them on the fly during his testimony (particularly as, under the new expungement rules, the one seeking expungement no say in who the arbitrators will be for expungements).

While expungements are not directly at issue in FINRA's notice, this concern is not limited to expungements. In *Walker v. Network1 Financial Securities et al.*, FINRA Case 20-02843, a case dealing with the trading of biotech securities on margin and the Firm's oversight thereof, the panel consisted of an attorney whose practice focused on mediation of disputes, a marketer, and a realtor.

We commend FINRA's rule changes which raised the required employment and educational qualifications for arbitrators. Increasing these qualifications was a commonsense approach to improve the quality and fairness of the FINRA arbitration forum. Unfortunately, it does not appear that FINRA will ever change its current position and mandate that one of three arbitrators be a non-public panel member in customer disputes. Most if not all industry participants in FINRA arbitration view that as a mistake, and still complain about it today, since having a non-public arbitrator on a panel provided the industry with some confidence that the panel would at least understand the applicable securities rules and regulations. As a result of FINRA's decision on this issue, it is our position that two of three arbitrators need to be attorneys given the need for arbitrators to address the applicable law to reach a fair result for all parties to the proceeding, as indicated above. The concept of having "professionals" on the arbitrator roster, rather than attorneys, is simply too vague.

D – Arbitrator Classification and Selection

For the above-stated reasons regarding arbitrator qualifications, we believe that FINRA should reinstitute its prior rule that every panel should have at least one industry arbitrator.

In the absence of that, we respectfully submit that every panel should have at least two attorneys on it, from two separate lists: one attorney who routinely represents Plaintiffs/ Claimants, and one who routinely represents Defendants/Respondents. Law professors, non-practicing individuals with law degrees, and present or former members of the judiciary may be included in a third grouping of potential arbitrators (*i.e.*, the professional participants). That is not to say that there is not a place for a roster of non-public arbitrators. It is our suggestion that FINRA give the public customer a choice between ranking a group of professionals or a group of non-public arbitrators as the third group for a three-member panel. However, upon making such a selection, it should be mandatory that someone from the third grouping be included as a member of the panel. This way, the industry respondent will not need to spend any time or money ranking a group of arbitrators who will never be considered by a public customer.

Furthermore, we are of the opinion that all Claimants, collectively, and all Respondents, collectively, should share their strikes during arbitrator selection. We trust that FINRA has become aware of the tactic being used by the plaintiff's bar to gain an advantage in the ranking process. If not, you may note that two, if not more attorneys have been combining their claims on behalf

of public customers against a single broker-dealer so as to game the arbitrator ranking process. While there is typically little, if any relationship between the public customers' claims, other than having accounts through the same broker-dealer, the attorneys file consolidated claims proceed to team up in the ranking process to strike the more perceived industry-friendly arbitrators.

E – Arbitrator Training

The undersigned merely wishes to restate what was previously said about arbitrators' understanding of the securities industry.

F – Discovery

The undersigned's only comment is that a Respondent's insurance information should never be required to be produced during discovery or prior to a hearing (it of course, may be voluntarily disclosed by Respondent if so desired). FINRA could consider rules requiring production in case of an adverse award.

H – Punitive Damages

The general concept that a panel can, under certain limited circumstances, award punitive damages, is acceptable. However, there must be more procedural safeguards put into place to prevent abuse. Even though such damages are infrequently awarded, that is of little solace in the instances when they are improperly awarded.

The previously referenced matter of *Walker v. Network1 Financial Securities*, FINRA Case 20-02843 is a perfect example of potential pitfalls in awarding punitive damages. In that award, the panel found "Respondent is liable for and shall pay to Claimant the sum of $750,000 in punitive damages pursuant to the Texas Deceptive Trade Practices Act." ("DTPA") However, case law held (arguably)[8] that the DTPA does not apply to the sale of securities at all; and even if it did, the statute itself limits the award of punitive damages to cases where the Defendant acted "knowingly" or "intentionally" (which the panel did not so find), *and* it limits an award to not more than three times actual damage (which the panel exceeded). In short, this case is one where the panel members (again, an attorney whose practice was mediation of disputes, a marketer, and a realtor) 1. based on their punitive damages award on a statute which arguably did not apply, 2. for which they did not make the findings prerequisite for the award of punitive damages, and then 3. they awarded an amount of punitive damages exceeding the legal maximum pursuant to the very statute they cited.[9]

[8] The Texas Supreme Court had previously explicitly held that the DTPA did not apply to the sales of securities (because they are not "goods" or "services" to which the act applies), before withdrawing the opinion so holding on other grounds.

[9] The Harris County District Court, showing (in the undersigned's opinion) too much deference to the panel, denied the petition to vacate or modify the award, without written explanation.

While no procedural scheme can guard against all potential miscarriages of justice, the undersigned suggests that additional procedural safeguards should be put into place prior to the awarding of punitive damages. These should include requiring an award of punitive damages to be an explained decision, citing the authority for the award, making any requisite factual findings, and setting forth the calculations for same. This should also apply to awards of attorney's fees. There should also be an internal appeals process to the NAC or some other appropriate body for a *de novo* review of awards of punitive damages and/or attorney's fees prior to the award being deemed "final" for purposes of a petition to vacate.

I – Explained Decisions

FINRA Arbitrators should be required to provide a brief factual summary of the reason(s) for their conclusions. It has been the undersigned's experience that sometimes, an award seems to fly in the face of the entirety of the evidence presented at the hearing, and when our clients ask us to explain why they lost when all the evidence seems to be on their side (or, in at least one case, won without seemingly having the evidence), we have no explanation to give.

Two egregious examples come to mind. In *Korn v. Garden State Securities et al.*, FINRA Case No. 17-02606, attorneys of this firm represented Claimants – a father who was unemployed on disability after suffering a traumatic brain injury, and his college student daughter. The Claimants' broker lost the vast majority of their accounts' value options trading based on a "speculation" objective when Respondents' own compliance manual forbade a "speculation" objective to anyone who was retired (Mr. Korn's new account paperwork contained both an occupation of "retired" and an objective of "speculation"). The arbitrator found, without explanation, for the Respondent. Additionally, though the arbitrator had also issued monetary sanctions against an individual Respondent during the case, said Respondent refused to pay because the final award did not contain the sanctions as part of the award (even though it referenced same in the procedural history).

A second one is *Topple v. Raymond James Financial Services et al.*, FINRA Case No. 10-01486. In that case, Claimant transferred in positions to his account which did not match his suitability profile. To its credit, Raymond James's computer system flagged the problem. However, his broker, rather than adjusting the investments to match the Claimant's suitability profile, simply changed Claimant's investment objectives in the computer system without authorization to allow for riskier investments and make the alert go away. Claimant then suffered significant losses in the 2008 market crash. Claimant's broker admitted to this on the record during the hearing (asserting he obtained Claimant's permission after the fact), and yet the panel solicited and granted his motion to dismiss at the close of Claimant's presentation, and ultimately dismissed Claimant's claims in their entirety.

An explained decision, while not causing a decision we would necessarily always agree with, would at least provide us with some level of answers to our clients when need be. It may also be vital in seeking to vacate (or confirm) an award in court. We do not believe that requiring

a few sentence explanation in an award would have any meaningful impact on workload, retention, etc.

J – Arbitration Awards Online

The undersigned has two comments in this respect. One, the technology needs to be updated so as to enable users' to be able to look up arbitration awards by arbitrator. By far the most time-consuming process of arbitrator research is the physicality of using the Arbitration Awards Online database to review their prior awards, which results in a long tedious process which ultimately clients bear the expense of.

Second, participants should be able to research all orders relating to Rule 12206 Motions to Dismiss. As it stands, a ruling on these Motions depends largely upon the ideology of an arbitrator. Some arbitrators view the Rule as a statute of repose and some view it as a statute of limitation. If a case is dismissed pursuant to a Rule 12206 Motion, FINRA Arbitration participants may see the order through a review of arbitrator's past decisions (in which case a Plaintiff attorney with concerns about the eligibility of his client's claim will strike the arbitrator in the ranking process). Conversely, if a panel or single arbitrator denies such a Motion, the only way the ruling may become known to FINRA arbitration participants through on-line award research is if the proceeding eventually resulted in an arbitration award and same is referenced in the procedural history. Since a denial of a Motion to Dismiss on eligibility grounds so often results in settlement, with no award being published, industry participants, in comparison to the Plaintiff's bar, are at a significant disadvantage in the ranking process with a case that presents eligibility issues due to the fact that so many arbitrator orders on Rule 12206 Motions are not memorialized by FINRA through the online awards. This inequity should be corrected. Industry participants should have the ability to know who has denied 12206 Motions, just as the Plaintiff's bar can research those arbitrators who have granted 12206 Motions.

M – General Requests for Comment

The undersigned has three additional concerns with the arbitration process.

(i) Simplified Arbitration

The first relates to simplified arbitration. Presently, a Claimant has the choice whether to waive simplified arbitration when he/she/it files a claim valued at under $50,000 and hold either a regular hearing or a "special proceeding" hearing. The undersigned believes *either* party should be able to do so. In the first place, it is questionable to the undersigned whether simplified arbitration is even permissible in New York, as CPLR 7506(b) provides "The arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing." This implies that a physical *hearing* is required. However, if either Claimant *or* Respondent can opt out of the arbitrator making the

decision on the papers, and neither party does so, then it can be argued that they each waived their right to a physical hearing.

(ii) Internal Appeals

Secondly, an internal appeals process as suggested for punitive damages should be more expansive, to cover obvious issues that occur during the process of an arbitration. The undersigned recalls *Schrader v. Oppenheimer*, FINRA Case No. 17-02224. In that simplified case, the arbitrator issued his award without notice to the parties and without a scheduled deadline for the parties to make the evidentiary submission, after same was adjourned pending production in response to a Motion to Compel. FINRA refused to vacate the award or correct the snafu, and would not even permit a motion to reconsider be filed to the arbitrator.[10] At the very least, there should be some sort of internal appeals process to handle prejudicial procedural issues such as this.

However, an internal appeal of the merits is something that the undersigned respectfully asserts is something that could also occur. For example, the AAA has (optional) appellate rules for internal appeals of arbitration awards on the grounds that the underlying award is based upon "(1) an error of law that is material and prejudicial; or (2) determinations of fact that are clearly erroneous."[11] FINRA could consider adopting similar rules, which would cover both the consideration of punitive damages above, but also other prejudicial findings such as denials of motion to dismiss, as in the example of the denial of Motions to Dismiss of individual respondents who were not affiliated with the firm at the time Claimant maintained an account, discussed above.

(iii) CRD Reportability

Finally, FINRA should reconsider the reportability of customer arbitrations (indeed, all complaints) on representatives' CRDs while they are pending. Recent expungement rule changes made it significantly harder for representatives to remove false information from their CRDs, but no consummate changes were made to make it more difficult for false information to be placed *on* their CRDs.[12] Respectfully, reporting requirements should be amended to allow the panel to determine whether or not a customer arbitration should be reported on CRD, either as part of the award, after settlement, or by some other process. The required disclosure of a supposedly confidential proceeding by representatives while it is still pending, before determination of whether any wrongdoing occurred, is something that should be modified.

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[10] Again, the extreme deference to arbitration awards by courts resulted in a denial of the petition to vacate.

[11] https://go.adr.org/rs/294-SFS-516/images/AAA154_Optional_Appellate_Rules_Overview.pdf

[12] One of this firm's clients received a complaint or about March 5, 2026, relating to the customer's account performance in *2008*. This client will now have to undergo the extreme time, expense, and difficulty to have a customer complaint made eighteen years after the fact expunged from his CRD.

Conclusion

We thank you for the ability to provide feedback on these important topics.

Very truly yours,

Craig A. Riha