SECURITIES MANAGEMENT AND RESEARCH, INC.
SM&R
Member FINRA/SIPC

April 29, 2026

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

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

Dear Ms. Mitchell:

Securities Management & Research, Inc. (CRD# 759) ("SM&R") and Berthel Fisher & Company Financial Services, Inc. (CRD# 13609) ("BFCFS") (collectively referred to as "Berthel") respectfully submits this joint comment letter in response to FINRA Regulatory Notice 26-06. While we strongly support FINRA's mission of investor protection, the current arbitration framework, as applied, has developed structural inconsistencies that undermine predictability, fairness, and confidence in outcomes.

This submission provides targeted reforms grounded in legal principles, real-world experience, and operational realities. These recommendations are designed to preserve investor protections while correcting systemic imbalances that distort liability, increase costs, and reduce market participation.

Impact Statement

The proposed reforms would significantly reduce the cost and unpredictability of arbitration while improving decision quality. By clarifying eligibility, requiring causation, and limiting speculative damages, FINRA can reduce the volume of marginal claims and focus resources on legitimate disputes.

These recommendations are designed to improve decision quality, reduce cost, and ensure outcomes are tied to actual conduct rather than hindsight-driven narratives.

I. Introduction

In practice, FINRA arbitration has increasingly deviated from its intended role as a fair and efficient dispute resolution forum. While designed to resolve legitimate disputes, it is often used in a manner that imposes liability disconnected from principles of legal causation and responsibility.

For example, a broker-dealer may conduct thorough due diligence, ensure suitability, and provide full disclosure, yet still face liability years later due to issuer misconduct or external market events that were not

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foreseeable. This dynamic, risks transforming arbitration into a mechanism for redistributing losses rather than adjudicating responsibility based on conduct.

II. Law vs. Equity – The Need for Legal Anchoring

Arbitration decisions must be anchored in governing law and the applicable facts of the dispute. When panels rely on generalized notions of fairness rather than applying established legal standards, outcomes become inconsistent, unpredictable, and difficult to reconcile with the regulatory framework.

A recurring concern is the perception that panels "split the difference" even where liability is not supported by facts. FINRA should mandate through arbitrator training, written guidance, and the arbitrator oath that arbitrators must fairly ascertain relevant facts and apply applicable FINRA rules and governing law.

FINRA should clarify that arbitrators are not permitted to disregard applicable facts or law or render decisions based solely on subjective notions of equity. Requiring arbitrators to articulate their reasoning and apply governing standards would promote disciplined decision-making and greater consistency across cases, without diminishing investor protection.

III. Eligibility – Preventing Stale Claims and Ensuring Consistent Application of Rule 12206

Without clear and consistent application of FINRA Rule 12206, claims based on transactions that occurred many years prior—often approaching or exceeding a decade—continue to proceed despite diminished evidentiary reliability, incomplete records, and fading witness recollection. This creates inherent unfairness and undermines the integrity of the arbitration process.

FINRA Rule 12206 is properly understood as an eligibility rule tied to a defined six-year period measured from the "occurrence or event giving rise to the claim." This framework aligns with FINRA's books and records retention requirements and provides an appropriate and necessary boundary for arbitration eligibility. Berthel does not believe the rule itself requires substantive revision. Rather, the primary issue is the inconsistent application and interpretation of the rule by arbitration panels.

Recent arbitration awards demonstrate that when properly applied, Rule 12206 functions effectively as a clear eligibility boundary. Panels have dismissed claims where the alleged misconduct occurred at or before the time of purchase and where subsequent generalized statements were correctly determined not to constitute ongoing actionable conduct sufficient to reset the eligibility period. ***See Exhibit A*** *(FINRA Arbitration Award, In the Matter of the Arbitration Between 23 Hoffman LLC, et al. and Concord Investment Services, LLC, Case No. 23-02260 (Jan. 2024).*

Panels have also recognized that Rule 12206 operates as a filing eligibility requirement distinct from a statute of limitations and that its six-year period corresponds directly with FINRA's record retention framework. ***See Exhibit B*** *(FINRA Arbitration Award, In the Matter of the Arbitration Between Lauren A. LaPlante-Rottman IRA, et al. and Chelsea Financial Services, Case No. 23-03231 (2024).* In addition, panels have dismissed claims where risks associated with investments were fully disclosed at the time of purchase and no intervening actionable conduct occurred within the six-year period. ***See Exhibit C*** *(FINRA Arbitration Award, In the Matter of the Arbitration Between Claimants and Wintrust Investments, LLC, Case No. 23-03644 (2024)*.

Recent decisions continue to reinforce this framework. In a FINRA arbitration involving a real estate investment trust purchased in 2014, the panel dismissed claims filed in 2025 as ineligible under Rule 12206. The panel emphasized that suitability is determined at the time of the investment and is not extended by subsequent market performance or later dissatisfaction. The panel further found that the claimant's execution of subscription documents and risk disclosures placed the claimant on notice of the risks at inception, and that reliance on alleged broker reassurances—such as statements that an investment was "fine" or would recover—did not constitute a new "occurrence or event" sufficient to reset the eligibility period. The panel also rejected any argument that delayed awareness or failure to review disclosed risks could extend the eligibility period, noting that there is no excuse for delayed filing where the relevant information was available at the time of the investment ***See Exhibit D*** *(FINRA Arbitration Award, In the Matter of the Arbitration Between Victor Ravelo and Independent Financial Group, LLC et al., Case No. 25-01910 (2026)*.

However, these well-reasoned outcomes are not consistently applied across cases. In practice, claimants frequently assert a broad range of allegations without differentiation as to when each alleged occurrence or event took place, and panels do not consistently evaluate these allegations independently under the eligibility rule.

This inconsistency is further compounded by the timing of Rule 12206 motions, which are often heard only after extensive discovery and costs have been incurred. This creates a structural incentive for marginal or time-barred claims.

To address these issues, FINRA should focus on clarifying application and improving procedural implementation, rather than modifying the rule itself. Specifically, FINRA should consider the following enhancements:

A. Early Determination of Eligibility

Eligibility should be determined at the earliest practicable stage to reduce cost and ensure only eligible claims proceed.

B. Allegation-by-Allegation Application

Panels should evaluate eligibility on an allegation-by-allegation basis to narrow disputes and improve efficiency.

C. Clarification of Occurrence or Event

FINRA should clarify that the relevant occurrence is tied to the time of recommendation or purchase, and not later dissatisfaction or generalized statements.

D. Enhanced Arbitrator Training

FINRA should enhance training to ensure consistent application across panels.

E. Use of Representative Awards

Representative awards should be used as training tools and are attached as Exhibits A, B, C, and D.

Rule 12206 should be preserved in its current form. The issue is not the rule, but its inconsistent application. Improved clarity and training will ensure fairness and consistency.

IV. Causation – The Missing Link in Many Claims

A fundamental principal of any adjudicatory framework is that liability must be tied to causation. However, in many cases, losses are attributed to broker-dealers despite being caused by external events such as issuer fraud, market shifts, or economic conditions. This has resulted in the unintended consequence of broker-dealers being insurers of investments. This dynamic risks imposing a standard of liability that is difficult to reconcile with traditional fault-based frameworks applied in other regulated contexts.

For instance, an investment impacted by an unforeseen market downturn or sponsor misconduct should not automatically result in broker-dealer liability absent a demonstrable failure tied to that outcome. Reinforcing a clear causal nexus between alleged misconduct and investor harm would ensure that accountability is properly assigned and that arbitration outcomes reflect actual responsibility.

V. Problem of Selective "Cherry Picking" Losses in Portfolios

A recurring and significant issue in FINRA arbitration is the selective presentation of investment outcomes, whereby a claimant isolates a single underperforming investment within a broader portfolio and asserts liability based solely on that discrete position. This approach fails to account for the full context in which the investment decision was made, including the investor's overall strategy, risk tolerance, and the performance of other investments recommended or facilitated by the same firm.

In practice, investors—particularly those allocating capital to alternative investments—often construct diversified portfolios precisely to manage risk across multiple positions with varying performance characteristics. Some investments may underperform, while others meet or exceed expectations. Evaluating a firm's conduct by focusing exclusively on one investment, without considering the performance and rationale of the broader portfolio, creates a distorted and incomplete picture of both the investor's experience and the reasonableness of the firm's actions.

This selective "cherry-picking" of losses introduces a hindsight-driven standard that is inconsistent with established principles of portfolio management and diversification. It also risks transforming FINRA arbitration into a mechanism that effectively insures against any individual investment loss, regardless of whether the overall investment strategy was appropriate, well-diversified, and prudently implemented. Such a standard would be unsustainable in any financial services context, as it would penalize firms for engaging in sound investment practices that are designed to benefit investors over time.

To promote fairness and analytical rigor, FINRA should provide guidance—or adopt rules—clarifying that arbitration panels must evaluate claims within the context of the investor's overall portfolio and investment strategy during the relevant period. At a minimum, panels should be permitted, and encouraged, to consider evidence of related investments, including those that performed in accordance with expectations or generated positive returns, when assessing both liability and damages. Consideration of offsetting gains and the aggregate outcome of a coordinated investment strategy is essential to determining whether a broker-dealer's recommendations were suitable and whether any alleged conduct actually resulted in compensable harm.

Incorporating a portfolio-level analysis would promote a more accurate and balanced assessment of investor outcomes, ensure that liability is tied to actual misconduct rather than isolated results, and align arbitration decisions with widely accepted investment principles. It would also preserve robust investor protection by ensuring that legitimate claims are fully adjudicated, while discouraging selective and incomplete presentations that distort the underlying facts and improperly expand liability beyond its intended scope.

Absent such clarification, the arbitration framework risks incentivizing claims that focus on isolated negative outcomes rather than the overall reasonableness of the investment strategy, effectively converting broker-dealers into guarantors of individual investment performance rather than evaluators of suitability and risk.

VI. Evidentiary Integrity and the Need for Reliable, Structured Standards

The current evidentiary framework in FINRA arbitration is intentionally flexible, but in practice, the absence of meaningful guardrails can result in the admission and reliance upon unsupported, speculative, or unreliable assertions. While arbitration is not intended to mirror the formal rules of evidence applied in judicial proceedings, a complete absence of evidentiary discipline risks undermining the integrity and consistency of outcomes.

When all proffered materials are effectively treated as admissible without meaningful scrutiny, arbitration panels may be required to evaluate large volumes of information without clear standards for reliability, relevance, or probative value. This increases the likelihood that decisions may be influenced by unverified statements or hindsight-driven narratives.

To address these concerns, FINRA should implement practical guidance that establishes baseline expectations for evidentiary reliability while preserving flexibility.

A. Establishment of Baseline Evidentiary Principles

FINRA should articulate high-level principles guiding arbitrators in assessing reliability, corroboration, and relevance of evidence to promote consistency.

B. Designation of an Evidentiary-Focused Arbitrator

At least one arbitrator should have familiarity with evidentiary standards and assist the panel in applying objective criteria when evaluating evidence.

C. Pre-Hearing Evidentiary Conferences

Pre-hearing conferences could be used to narrow evidentiary disputes and improve efficiency.

D. Guidance on Hearsay and Speculative Evidence

FINRA should clarify that while hearsay may be admissible, its weight depends on reliability and corroboration.

E. Written Explanation of Evidentiary Weight

Panels should briefly explain how key evidence was evaluated to improve transparency.

VII. Clarification of Arbitrator Obligations and Reasoned Awards

FINRA arbitration serves as a mandatory dispute resolution forum for member firms and associated persons. As such, it is critical that arbitration awards reflect a disciplined and transparent application of governing law, FINRA

rules, and the evidentiary record.

To promote fairness, consistency, and confidence in the forum, FINRA should require that arbitration panels provide a reasoned basis for their awards sufficient to demonstrate that:

- The panel identified and applied the relevant FINRA rules, contractual provisions, and applicable law;
- The decision is grounded in the material facts established in the record, rather than generalized notions of equity;
- Any finding of liability reflects a clear and supportable theory of causation; and
- Any damages awarded are logically tied to the proven conduct and resulting harm.

Importantly, this requirement is not intended to transform arbitration awards into judicial-style opinions or to require expansive narrative findings. Rather, the objective is to ensure that awards reflect a discernible and principled analytical framework, confirming that the outcome is anchored in the applicable law and facts presented, without inviting unnecessary detail or advisory commentary.

At the same time, requiring a reasoned framework promotes greater accountability in panel decision-making. Even in the absence of a formal appellate process, the expectation that awards demonstrate adherence to governing rules, facts, and causation reinforces that arbitrators must operate within legal and evidentiary boundaries, rather than relying on subjective or purely equitable considerations.

Establishing this standard would:

- Reinforce that arbitrators are obligated to apply governing rules and law, not to decide cases based on subjective or purely equitable considerations;
- Promote discipline and accountability in panel-decision-making, particularly where the application of law and facts may otherwise be unclear;
- Enhance consistency and predictability across awards without creating formal precedent;
- Improve the credibility and integrity of the arbitration process for all participants; and
- Provide parties with a clear but appropriately bounded understanding of the rationale underlying the decision.

By adopting this clarification, FINRA can strengthen confidence in its arbitration forum while preserving the efficiency and finality that make arbitration an effective dispute resolution mechanism.

VIII. Damages – Eliminating Hindsight Bias

Speculative damages models allow reconstruction of hypothetical outcomes that were never guaranteed. This introduces hindsight bias and distorts liability.

For example, suggesting that an investor "would have" achieved better results in a different investment assumes perfect foresight. Damages should instead reflect actual losses tied to proven conduct.

IX. Due Diligence – Need for Clear Standards

The lack of defined due diligence standards creates uncertainty. Firms cannot reasonably defend against claims when expectations are undefined and evaluated retrospectively.

A safe harbor framework would provide clarity. If a firm follows established due diligence steps, there should be a presumption of reasonableness, shifting the burden to claimants to identify specific failures.

X. Structural Cost Imbalance, Early Case Screening, and Settlement Pressure

A significant structural issue within the current FINRA arbitration framework is the pronounced cost imbalance between claimants and respondents, which can create substantial pressure to settle even where claims lack merit. The cost of defending an arbitration claim through a full hearing—including legal fees, expert costs, discovery expenses, and forum fees—can be substantial. As a result, respondents may face economic incentives to resolve claims irrespective of their underlying validity.

This dynamic can unintentionally encourage the filing of marginal or unsupported claims, as the cost of defense alone creates settlement leverage. While arbitration is intended to provide an efficient and cost-effective alternative to litigation, this imbalance can, in practice, reduce efficiency and divert resources away from the resolution of meritorious disputes.

To address this issue, FINRA should consider implementing targeted procedural reforms designed to improve early case evaluation and reduce the progression of claims that lack a sufficient legal or factual basis. These reforms would enhance fairness for all parties while preserving access to the forum for legitimate claims.

A. Enhanced Early Case Screening Mechanism

FINRA should consider implementing an enhanced early screening process, either administered by the Director of Dispute Resolution Services or through an expedited arbitrator review, to evaluate whether claims meet minimum threshold requirements before proceeding to full discovery.

At a minimum, such screening could require that claims allege cognizable, realized damages, articulate a clear causal nexus between the respondent's conduct and the alleged harm, and present a facially plausible theory of liability based on applicable FINRA rules or governing law.

Claims that fail to meet these threshold criteria could be dismissed without prejudice, stayed pending further development, or required to be repleaded with greater specificity. This approach would not limit investor access to arbitration but would ensure that the forum is reserved for disputes involving identifiable and actionable claims.

B. Expanded and More Practical Motion to Dismiss Framework

FINRA should consider expanding the grounds for pre-hearing dismissal to include failure to plead causation, absence of realized damages, claims based solely on post-transaction events, and failure to meet defined due diligence standards where applicable frameworks are satisfied.

In addition, FINRA could require that such motions be heard on an expedited basis and decided prior to full discovery to prevent unnecessary cost escalation. This would provide a meaningful mechanism to resolve non-meritorious claims early in the process.

C. Limited Cost-Shifting for Clearly Deficient Claims

To further address structural imbalance, FINRA should consider adopting a limited and targeted cost-shifting mechanism in circumstances where claims are dismissed at an early stage for failure to meet threshold

standards. Such a framework could apply only where a claim is clearly deficient on its face and allow recovery of reasonable forum fees and a portion of defense costs.

The purpose of such a mechanism would not be punitive, but rather to discourage the filing of claims lacking a sufficient factual or legal basis and better align incentives with the efficient use of the arbitration forum.

D. Procedural Efficiencies to Reduce Cost Escalation

FINRA may also consider additional procedural enhancements to reduce unnecessary cost burdens, including phased or limited discovery protocols tied to the viability of claims, early case management conferences focused on narrowing issues, and streamlined procedures for resolving threshold legal questions.

Taken together, these reforms would help ensure that FINRA arbitration remains an efficient and fair forum for resolving legitimate disputes. By improving early case evaluation and addressing structural cost imbalances, FINRA can reduce incentives for non-meritorious filings while preserving robust access for investors with valid claims.

XI. Necessary Procedural Improvements to FINRA Arbitration Process

FINRA arbitration procedures can create unintended imbalances, inefficiencies, and unfairness due to factors and situations that were not foreseeable at the time of the drafting of the initial procedural rules. For example, aggregation of claims may promote efficiency, certain procedural dynamics can result in disproportionate influence by claimants in ways that undermine neutrality and fairness in the arbitration process.

A. Arbitrator Selection Imbalance in Cases Involving Multiple Claimants

A key concern arises in the arbitrator selection process when multiple claimants are represented by different counsel. In such cases, each claimant's counsel may independently exercise arbitrator strikes and rankings, resulting in a cumulative effect where claimants collectively exert greater influence over panel composition than the respondent.

FINRA should consider safeguards such as coordinated claimant rankings, limiting strikes on a per-side basis, or consolidating claimant voting power to preserve neutrality in panel formation.

B. Venue Selection and Remote Participation

Procedural concerns arise where claimants select a favorable venue while requesting remote participation. This creates inequities for respondents and may impact credibility of testimony.

FINRA should require in-person participation at the selected venue, with limited exceptions such as documented medical necessity or mutual agreement of the parties.

C. Fee Assessment and Unspecified Damages

When claimants fail to specify damages, respondents may be assessed disproportionate fees. This creates inefficiency and incentivizes ambiguity.

FINRA should require reasonable specificity in damages at filing or adjust fees once damages are clarified.

XII. Arbitrator Qualifications in Complex Cases

FINRA arbitration increasingly involves complex financial products and regulatory issues, yet arbitrator pools do not always reflect necessary expertise.

FINRA should implement enhanced qualification standards, including experience thresholds, subject-matter expertise criteria, and specialized arbitrator pools for complex cases.

XIII. Discovery Compliance and Enforcement of Claimant Production Obligations

A recurring procedural challenge in FINRA arbitration is the inconsistent enforcement of discovery obligations, particularly with respect to claimant document production. While FINRA has established discovery guides and parameters intended to facilitate fair and efficient exchange of information, in practice, respondents frequently encounter situations where claimants fail to produce responsive documents in a timely or complete manner.

In many cases, respondents are forced to pursue repeated follow-ups, engage in motion practice, and incur additional legal and administrative costs simply to obtain materials that should have been produced in the ordinary course under existing discovery guidelines. This dynamic creates unnecessary delay, increases the cost of proceedings, and places respondents at a structural disadvantage in preparing their defense.

The issue is particularly acute where claimants, through counsel, selectively produce favorable documents while withholding or delaying production of materials that may be relevant to the evaluation of suitability, investment experience, communications, or overall portfolio context. Such practices undermine the integrity of the arbitration process and impede the panel's ability to make fully informed decisions based on a complete factual record.

To address these concerns, FINRA should consider implementing more structured and enforceable mechanisms to ensure compliance with discovery obligations, including the following:

A. Affirmative Panel Oversight of Discovery Compliance

FINRA should require arbitration panels to take a more active role in overseeing discovery compliance, including confirming at defined intervals that both parties—particularly claimants—have complied with applicable discovery guides and document requests. Panels should be empowered to require certifications of completeness and to inquire into any identified gaps in production.

B. Mandatory Discovery Certification by Claimants

Claimants should be required to certify, under affirmation, that they have conducted a reasonable search and produced all responsive, non-privileged documents within their possession, custody, or control. Such a requirement would align FINRA arbitration more closely with established litigation practices and promote accountability in the discovery process.

C. Streamlined and Enforceable Discovery Motion Process

FINRA should consider implementing an expedited and streamlined process for resolving discovery disputes, including shorter timelines for motion submission and decision, as well as clearer standards for granting relief.

Panels should be encouraged to address discovery deficiencies promptly, prior to the escalation of costs and delays.

D. Meaningful Consequences for Non-Compliance

To ensure that discovery obligations are taken seriously, FINRA should provide panels with clearer authority and guidance to impose appropriate remedies where a party fails to comply. Such remedies could include adverse evidentiary inferences, limitations on the use of withheld evidence, allocation of forum fees or costs associated with discovery disputes, or, in appropriate cases, dismissal of claims or defenses where non-compliance is material and prejudicial.

E. Early Discovery Conferences and Issue Identification

FINRA should also consider requiring early discovery conferences to identify key categories of documents and set clear expectations for production timelines. This would allow panels to proactively manage discovery and reduce the likelihood of disputes arising later in the proceeding.

Strengthening discovery compliance and enforcement mechanisms would significantly improve the efficiency and fairness of FINRA arbitration. Ensuring that claimants meet their production obligations under existing rules will reduce unnecessary motion practice, lower costs, and enable panels to evaluate disputes based on a complete and accurate evidentiary record. These reforms would benefit all parties and reinforce confidence in the arbitration process.

XIV. Absence of a Meaningful Appellate Mechanism and the Need for Limited Review

FINRA arbitration awards are final and binding and are not subject to review or appeal within the FINRA forum. While parties may seek judicial review under the Federal Arbitration Act, that process is not a true appeal. Courts reviewing arbitration awards are limited to extremely narrow procedural grounds and do not review the merits of the decision, including factual findings or legal conclusions.

As a result, even where an arbitration panel misapplies FINRA rules, disregards applicable law, or reaches conclusions that are unsupported by the evidentiary record, there is no meaningful mechanism for correction. This creates a structural gap in accountability that is inconsistent with other adjudicatory frameworks, particularly given the significant financial and regulatory consequences that may result from arbitration awards.

The absence of a limited appellate or review mechanism places heightened importance on arbitrator decision-making while simultaneously providing no structured process for addressing material errors. This dynamic can undermine confidence in the arbitration system and creates risk that similarly situated cases will yield inconsistent outcomes without the benefit of corrective oversight.

This issue is closely tied to the need for explained decisions and clearer expectations that arbitrators apply governing law and FINRA rules in a disciplined manner. Without articulated reasoning or a mechanism for limited review, there is no practical method to ensure consistency or accountability across cases.

Proposed Framework for Limited Review

FINRA should consider adopting a narrowly tailored internal review or appellate mechanism designed to preserve the efficiency of arbitration while promoting accountability and consistency.

A. Limited Grounds for Review

Review should be confined to clearly defined categories, such as material misapplication of FINRA rules or governing law; failure to consider or disregard of material evidence; internal inconsistency in the award; or awards that lack any articulated factual or legal basis, particularly in the absence of explained decisions.

B. Threshold-Based Review Process

To prevent overuse, FINRA could require a defined monetary threshold or a preliminary showing that the request raises a substantial issue of law or process.

C. Specialized Review Panel

Review could be conducted by a separate panel of experienced arbitrators or a limited appellate body with demonstrated expertise in securities law and FINRA rules.

D. Expedited Timeline

To preserve arbitration efficiency, review should be completed on an expedited basis and limited to the existing record, without new discovery or hearings.

E. Standard of Review

The standard should remain deferential, focusing on clear error in application of rules or law, rather than reweighing credibility or factual determinations.

Introducing a limited and carefully structured review mechanism would not undermine the efficiency of FINRA arbitration. Rather, it would enhance consistency, reinforce disciplined application of FINRA rules and governing law, and promote confidence that arbitration outcomes are subject to appropriate oversight where material errors occur.

XV. Panel Composition and the Role of Subject-Matter Expertise

The composition of arbitration panels is a critical factor in ensuring that disputes are resolved fairly, consistently, and based on an accurate understanding of the issues presented. FINRA's current framework for customer disputes generally provides for all-public panels, unless the parties mutually agree otherwise.

While this structure promotes perceptions of neutrality, it may not always ensure that panels possess the subject-matter expertise necessary to evaluate increasingly complex financial products, regulatory obligations, and industry practices. Modern arbitration cases frequently involve issues relating to alternative investments, structured products, liquidity constraints, disclosure frameworks, and suitability determinations that are grounded in industry-specific knowledge.

The absence of arbitrators with meaningful industry experience in such cases can lead to decisions that are influenced by hindsight or a lack of familiarity with how products function, how risks are disclosed, and how regulatory standards are applied in practice. This dynamic may contribute to inconsistent outcomes and undermine confidence in the arbitration process.

To address these concerns, FINRA should consider enhancements to its panel composition framework that incorporate subject-matter expertise where appropriate, while preserving neutrality and fairness.

A. Inclusion of Industry-Experienced Arbitrators in Complex Cases

FINRA should consider allowing for, or requiring, the inclusion of at least one arbitrator with relevant industry experience in cases involving complex financial products or regulatory issues. This could be implemented through case-type classifications, party election mechanisms, or enhanced list selection processes that ensure availability of qualified candidates.

B. Expertise-Based Panel Construction

Rather than focusing solely on public versus non-public classifications, FINRA could incorporate an expertise-based approach to panel composition. This would allow for the inclusion of arbitrators with securities industry experience, regulatory or compliance expertise, or relevant financial product knowledge.

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C. Safeguards to Preserve Neutrality

Any incorporation of industry experience should be accompanied by appropriate safeguards, including continued robust conflict-of-interest disclosures, balanced panel composition, and clear expectations regarding impartiality. These measures would ensure that the inclusion of industry expertise enhances, rather than detracts from, the fairness of the forum.

Incorporating subject-matter expertise into arbitration panels—particularly in complex cases—would improve the quality of decision-making, promote more consistent application of FINRA rules, and reduce the risk of outcomes driven by misunderstanding or hindsight. A balanced approach that includes industry experience where appropriate would strengthen the arbitration process while maintaining its integrity and neutrality.

XVI. Conclusion

FINRA has an opportunity to strengthen arbitration by reinforcing legal principles, improving transparency, and addressing structural imbalances. These reforms will enhance fairness for investors while ensuring that liability is appropriately grounded in conduct and causation.

A system that is predictable, transparent, and legally grounded benefits all participants and reinforces confidence in the capital markets.

Respectfully submitted,

Jeff Roseman
General Counsel
SM&R and BFCFS

EXHIBIT A

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
23 Hoffman LLC
3155-3157 Villa, Inc.
Muharrem Nezaj

vs.

Respondents
Concorde Investment Services, LLC
Scott Offerman

Case Number: 23-02260

Hearing Site: New York, New York

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants 23 Hoffman LLC, 3155-3157 Villa, Inc., and Muharrem Nezaj (collectively "Claimants") : Michael C. Bixby, Esq., Bixby Law PLLC, Pensacola, Florida.

For Respondents Concorde Investment Services, LLC, and Scott Offerman (collectively "Repsondents"): Holly Cole, Esq., and Scott Holcomb Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2023.
23 Hoffman LLC signed the Submission Agreement: August 17, 2023.
3155-3157 Villa, Inc. signed the Submission Agreement: August 17, 2023.
Muharrem Nezaj signed the Submission Agreement: August 17, 2023.

Statement of Answer filed by Respondents on or about: October 25, 2023.
Concorde Investment Services, LLC signed the Submission Agreement: October 25, 2023.
Scott Offerman signed the Submission Agreement: October 25, 2023.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of FINRA/NYSE/SEC Rules and Regulations; breach of contract; negligence; negligent supervision; violation of New York Consumer Protection Statute; and unjust enrichment. The causes of action relate to SL Enclave West DST.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages of no less than $1,000,000 as well as damages for the loss of income that would have been received had Claimants' money been managed properly, as well as all other losses, foreseeable or not, that Claimants suffered, including non-pecuniary losses including emotional distress damages; disgorgement and return of all fees, management charges, and commissions; interest on Claimants' losses at the legal rate; Claimants' costs, legal fees and expenses; rescission and/or statutory damages; treble damages; punitive damages; and such other and additional damages and relief as deemed just and equitable.

In the Statement of Answer, Respondents requested that the Panel deny all claims.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On June 11, 2024, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On July 11, 2024, Claimants filed a response opposing the Motion to Dismiss. On July 29, 2024, Respondents filed a reply in further support of the Motion to Dismiss. On August 22, 2024, the Panel heard oral arguments on the Motion to Dismiss. On September 3, 2024, the Panel granted the Motion to Dismiss on the grounds that:

> Respondents in their Motion to Dismiss ("Respondents' Motion") asserted that the alleged events or occurrences and/or representations regarding the suitability of the investment giving rise to Claimants' claims occurred before or during July 2015, when the investment was made. Thus, given that the claim was filed in 2023, the claim would be barred under the FINRA eligibility rule.
>
> Claimants, in response, and during Oral Argument, asserted that in addition to the pre-July 2015 occurrences, the "event or occurrence" giving rise to their asserted claims may be their discovery of Respondents' alleged ("fraud or wrongdoing"), when Claimants consulted an attorney in 2023 and/or Respondents' continuing conduct of concealing their wrongdoing. In particular, Claimants noted Respondents' representation when distributions stopped that "everything would be okay" as evidence of such concealment. Respondents in its Reply and during Oral Argument, asserted that with respect to unsuitability claims, subsequent advice would not restart the eligibility clock and that the

Discovery Rule (the eligibility clock is tolled until the fraud was discovered) would not apply at all.

The Panel notes that FINRA in its guidance (submitted as Exhibit A) states that:

> You might find that there is a continuing occurrence or event giving rise to the dispute. For example, although a customer purchased stock 10 years ago, you might find that there are allegations of ongoing fraud starting with the purchase, but continuing to date within six years of the date the claim was filed. You may or may not decide to hear this case based on the arguments of the parties.

Furthermore, the Panel notes that it can choose to apply to toll the eligibility provision (see Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002)) and/or apply the Discovery Rule under certain circumstances (see Mid-Ohio Securities Corp. v. Estate of Burns, 790 F.Supp.2d 1263 (2011).

It is, however, the Panel's ruling that the event or occurrence giving rise to the claims asserted regarding representations made by Respondent to Claimants occurred before the July 2015 purchase date of the investment, the 1031 exchange. The Panel agrees with Respondents' assertion that its assurances that "everything would be okay" without more is not sufficient evidence of an ongoing fraud/concealment. As noted by Respondents during Oral Argument (see page 4):

> The Second Circuit has made clear that general announcements that a company is optimistic about earnings and expects a product to perform well cannot constitute actionable statements under the securities laws because they would not mislead a reasonable investor (citations omitted). Likewise, statements expressing optimism about current and future economic growth are too nonspecific to be actionable.

Furthermore, it would not be appropriate to apply the Discovery Rule in the instant matter. The Discovery Rule is generally applied in circumstances where the suitability of a particular investment (risks associated with) could not be ascertained before or at the time of purchase due to Respondents' actions (e.g., concealment) (see, for example, Mid-Ohio Securities Corp. v. Estate of Burns, 790 F.Supp.2d 1263 (2011)). In contrast, in the instant matter, it is uncontested that Claimants received a Private Placement Memo and Supplements from the issuer before making its purchase, which included the disclosure of various risk factors. No allegations were made regarding the veracity of these materials. Therefore, Claimants could have made a determination before its purchase regarding the suitability or unsuitability of its investment.

In view of the foregoing, the Panel determines that the Respondents' Motion to Dismiss is granted without prejudice to any right Claimants have to file in court. Claimants are not prohibited from pursuing the claims in a court pursuant to Rule 12206(b) of the Code.

AWARD

After considering the pleadings, and other submissions, the Panel has decided in full and final

resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$ 2,025.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees
Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Concorde Investment Services, LLC is assessed the following:

Member Surcharge	=$ 3,200.00
Member Process Fee	=$ 6,375.00

Hearing Session Fees and Assessments
The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ $450.00/session		=$	450.00
Pre-Hearing Conference:	July 15, 2024	1 session	
Two (2) pre-hearing sessions with the Panel @ $1,435.00/session		=$	2,870.00
Pre-Hearing Conferences:	December 22, 2023	1 session	
	August 22, 2024	1 session	
Total Hearing Session Fees		=$	3,320.00

The Panel has assessed $1,660.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed $1,660.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Cheryl H. Agris	-	Public Arbitrator, Presiding Chairperson
Clarence Smith, Jr.	-	Public Arbitrator
Elaine Shay	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Cheryl H. Agris — **09/12/2024**
Cheryl H. Agris
Public Arbitrator, Presiding Chairperson
Signature Date

Clarence Smith, Jr. — **09/08/2024**
Clarence Smith, Jr.
Public Arbitrator
Signature Date

Elaine Shay — **09/06/2024**
Elaine Shay
Public Arbitrator
Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

September 12, 2024
Date of Service (For FINRA Dispute Resolution Services use only)

EXHIBIT B

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Lauren A LaPlante-Rottman IRA
Douglas Hodczak
Frank Marchesani
Anita Marchesani
Colleen Stremel
Scotty Beevers

Case Number: 23-03231

vs.

Respondents
Chelsea Financial Services
John Thomas Pisapia

Hearing Site: Boston, Massachusetts

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Lauren A LaPlante-Rottman IRA, Douglas Hodczak, Frank Marchesani, Anita Marchesani, Colleen Stremel, and Scotty Beevers (collectively, "Claimants"): Gary S. Menzer, Esq., and Jonathan Schwartz, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondents Chelsea Financial Services, and John Thomas Pisapia ("Pisapia"): Michael Utilla, Esq., Brooklyn, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 17, 2023.
Amended Statement of Claim filed on or about: April 12, 2024.
Answer to the Counterclaim filed on or about: July 8, 2024.
Claimants signed the Submission Agreement: November 17, 2023.

Statement of Answer filed by Respondent Chelsea Financial Services on or about: December 22, 2022.
Statement of Answer filed by Respondents Chelsea Financial Services and Pisapia on or about:

April 12, 2024.
Counterclaim filed by Respondents Chelsea Financial Services and Pisapia on or about: May 29, 2024.
Chelsea Financial Services signed the Submission Agreement: December 21, 2023.
Pisapia signed the Submission Agreement: May 15, 2024.

CASE SUMMARY

In the Amended Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of state securities statutes; breach of fiduciary duty; negligence and gross negligence; misrepresentation/omission and negligent misrepresentation/omission; unjust enrichment; failure to supervise; common law and statutory claims and damages; and vicarious and control person liability. The causes of action relate to investments in promissory notes issued by Resolute Capital Partners, LTD, LLC, Homebound Resources, LLC, Thomas J. Powell, and Stefan T. Toth.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondents denied the allegations asserted in the Amended Statement of Claim, asserted various affirmative defenses, and the following cause of action: malicious prosecution, fraud, abuse of process, and defamation of license.

Unless specifically admitted in the Statement of Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested: compensatory damages in excess of $500,000.00; statutory damages pursuant to state laws, recessionary damages, lost opportunity damages, and accrued statutory interest; costs; filing and hearing fees; and for other remedies deemed proper and appropriate.

In the Statement of Answer and Counterclaim, Respondents requested an award which denies all claims set forth in the Statement of Claim; compensatory damages in the amount of $250,000.00; punitive damages; expungement for Respondent Pisapia (CRD Number 2336216) of all references to Occurrence Number 2336858 from Central Registration Depository (“CRD”) registration records; attorneys’ fees; costs; and for such other and further relief deemed just and proper.

In the Answer to the Counterclaim, Claimants requested that: each and every claim made by Respondents be denied with prejudice; Respondents take nothing by way of their Counterclaim; and that all costs associated with the Counterclaim be assessed against Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The original Statement of Claim was filed on November 7, 2023, but was not served on Respondents or considered by the Arbitrators.

On December 22, 2023, Respondent Chelsea Financial Services filed a Motion for a More Definitive Statement of Claim ("Motion"). On February 1, 2024, Claimants filed a response opposing the Motion. On February 1, 2024, Respondent Chelsea Financial Services filed a reply in further support of the Motion. On March 19, 2024, the Panel heard oral arguments on the Motion. By Order dated March 19, 2024, the Panel directed to file an Amended Statement of Claim that contains the following information: (i) the date or dates on which each Claimant purchased each security at issue; (ii) the date on which each Claimant became a client of Respondent: and (iii) the date on which each Claimant became a client of Brandon C. Rudolph.

On April 9, 2024, Claimants filed a Motion for Leave to File Amended Statement of Claim to add an additional Respondent. On April 12, 2024, the parties filed a Joint Stipulation with Respondents' consent to Claimants' filing of the Amended Statement of Claim. On May 13, 2024, the Panel granted Claimants' Motion for Leave to Amend the Statement of Claim.

On April 12, 2024, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On May 13, 2024, Claimants filed a response opposing the Motion to Dismiss. On May 16, 2024, Respondents filed a reply in further support of the Motion to Dismiss. On May 28, 2024, the Panel heard oral arguments on the Motion to Dismiss. The Panel issued an Order the same day stating that the Panel was unable to reach a unanimous decision and, pursuant to the applicable rule, the motion must be denied.

On May 29, 2024, Respondents filed a Motion for Leave to File Counterclaims. On June 10, 2024, Claimants filed an Opposition to the Motion. On June 10, 2024, Respondents filed a Reply to the Opposition. By Order dated June 28, 2024, the Panel granted Respondents' Motion for Leave to file Counterclaims.

On July 5, 2024, Respondents filed a Motion to Compel Discovery and for Sanctions. On July 15, 2024, Claimants filed an Opposition to the Motion. On July 16, 2024, Respondents filed a Reply to the Opposition. On July 22, 2024, the Panel issued an Order stating that: Claimants are directed to provide complete responses to Respondents' pending discovery requests, including but not limited to the requests set forth in detail in Respondents' reply papers. The motion for sanctions is denied. However, Claimants are advised that, at the hearing on the merits, they will be precluded from introducing any evidence that was called for by Respondents' discovery requests that are not provided by August 2, 2024.

On August 21, 2024, the Panel granted Respondents' Motion to Dismiss on the grounds that:

> On August 21, 2024, the Panel convened to discuss a series of pending motions and cross motions relating to discovery, sanctions, and cross motions for sanctions. Under the circumstances, the Panel decided to review the entire status of this matter and, after discussion, came to the decision set forth in this opinion.
>
> On April 12, 2024, Respondents filed a motion to dismiss this matter pursuant to FINRA Rule 12206(a). On May 28, 2024, this motion was argued before the Panel. Later that

day, the Panel, having failed to reach a unanimous decision as required by the Rule, denied the motion with leave for Respondents to move again as the hearing date approached.

In its discussion of the status of this case on August 21, 2024, the Panel discovered that it now was unanimous in its decision that this case should be dismissed pursuant to Rule 12206(a). The reasons for this decision are set forth below.

As with all contested motions pursuant to Rule 12206(a), the issue before us is whether the six-year period referred to in the Rule is a filing requirement or a statute of limitations. In the instant case, all the Claimants purchased the investment product at issue seven or more years before the arbitration claim was instituted; this matter was filed on November 17, 2023, and the broker who sold the securities left Respondent Chelsea's employ on November 21, 2016, nearly seven years before this arbitration was filed. Claimants had the opportunity to challenge this timeline but provided no additional information.

We unanimously agree that the six-year period in Rule 12206(a) is a filing requirement and not a statute of limitations. First, we have confidence that FINRA knows what a statute of limitations is and would have so denominated Rule 12206(a) if that was its intention. Second, as many previous cases have pointed out, the six-year filing requirement compliments the six-year record retention requirement FINRA imposes on member firms.

Third, many of the causes of action asserted in the typical customer claim, including this one, have statutes of limitations less than six years. We do not think that FINRA intended to extend state or federal statutes of limitations when it enacted Rule 12206(a).

Our fourth reason seems dispositive, even though we do not know of any other motion decided under Rule 12206(a) relying on it. Unlike any other provision of the FINRA rules that we are aware of, Rule 12206(b) permits a Claimant who loses a motion under Rule 12206(a) to refile its claim in a court of competent jurisdiction. This right to refile contained in Rule 12206(b) would be meaningless if Rule 12206(a) were a statute of limitations because the second suit would be subject to a motion to dismiss pursuant to the doctrine of res judicata since the issue of statute of limitations had been fully addressed in the earlier arbitration between the same parties.

Since we have decided that the Rule 12206(a) is a straightforward filing requirement we do not have to consider the issue of tolling and the various other defenses to the statute of limitations. As previously stated, we agree that the claim should be dismissed.

The other pending motions need not be decided since they have become moot given our decision to dismiss the case. To avoid any confusion, documents previously produced may be retained by the receiving party, subject to any confidentiality agreements that may have been entered into by the parties.

Respondents' Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

Accordingly, the Panel made no determination with respect to expungement of references to Occurrence Number 2336858 from CRD registration records of John Thomas Pisapia.

On October 15, 2024, Respondents filed a notice of settlement and withdrawal of the Counterclaim. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Counterclaim.

AWARD

After considering the pleadings, the Motion to Dismiss, the testimony and evidence presented at the recorded May 28, 2024, pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice pursuant to Rule 12206(a) of the Code.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$ 1,740.00
Counterclaim Filing Fee	=$ 2,125.00
Counterclaim Filing Fee	=$ 1,600.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees
Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Chelsea Financial Services is assessed the following:

Member Surcharge	=$ 2,625.00
Member Process Fee	=$ 5,225.00

Discovery-Related Motion Fees
Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with the Panel @ $600.00/decision	=$	600.00

Respondents submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	=$	600.00

The Panel has assessed the total discovery-related motion fees jointly and severally to Claimants.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ $1,325.00/session			=$	3,975.00
Pre-Hearing Conferences:	March 4, 2024	1 session		
	March 19, 2024	1 session		
	May 28, 2024	1 session		
Total Hearing Session Fees			=$	3,975.00

The Panel has assessed $1,987.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed $662.50 of the hearing session fees to Respondent Chelsea Financial Services.

The Panel has assessed $1,325.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Gene M. Bauer	-	Public Arbitrator, Presiding Chairperson
Denise L. Presley	-	Public Arbitrator
John George Neylon, Sr.	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Gene M. Bauer — **10/21/2024**
Gene M. Bauer — Signature Date
Public Arbitrator, Presiding Chairperson

Denise L. Presley — **10/18/2024**
Denise L. Presley — Signature Date
Public Arbitrator

John George Neylon, Sr. — **10/17/2024**
John George Neylon, Sr. — Signature Date
Public Arbitrator

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

October 21, 2024
Date of Service (For FINRA Dispute Resolution Services use only)

EXHIBIT C

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
April Schuster,
Roy & Marina Heine,
Patricia Labrosciano,
Peter & Jennifer Smykowski,
William Prost and Susan Petrauskis,
as Trustees for the Robert E. Prost & Rita R. Prost Trust DTD 02/03/1997, and
Michael Hall

vs.

Respondent
Wintrust Investments LLC

Case Number: 23-03644

Hearing Site: Chicago, Illinois

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants April Schuster, Patricia Labrosciano, Peter & Jennifer Smykowski, William Prost and Susan Petrauskis, as Trustees for the Robert E. Prost & Rita R. Prost Trust DTD 02/03/1997, and Michael Hall: Adam J. Gana, Esq. and Adam J. Weinstein, Esq., Gana Weinstein LLP, New York, New York.

For Claimants Roy & Marina Heine (collectively, with April Schuster, Patricia Labrosciano, Peter & Jennifer Smykowski, William Prost and Susan Petrauskis, as Trustees for the Robert E. Prost & Rita R. Prost Trust DTD 02/03/1997, and Michael Hall, "Claimants"): Jonathan Kurta, Esq., Kurta Law, Jericho, New York.

For Respondent Wintrust Investments LLC ("Respondent"): Melvin G. Moseley, Jr., Esq., Moseley Law PLLC, Grand Rapids, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: December 27, 2023.
Claimants signed the Submission Agreement: December 27, 2023.

Statement of Answer filed on or about: February 16, 2024.
Amended Statement of Answer filed on or about: March 18, 2024.
Respondent signed the Submission Agreement: February 15, 2024.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; suitability; fraudulent or negligent material misrepresentations and omissions; violation of FINRA Rules 2010, IM-2310-2, Rule 2020, and 2210; failure to supervise; control person liability; respondeat superior; and breach of contract. The causes of action related to Claimants' allegations that Respondent's agents mislead them by recommending unsuitable investments and investment strategies in various illiquid alternative investments and thereafter recommended that they hold those investments despite the availability of information concerning the poor prospects of the investments. Claimants further alleged that, as a result, they suffered losses. The investments involved the following non-traded real estate investment trusts: Northstar Healthcare Income and Griffin Capital Essential Asset.

Unless specifically admitted in the Statement of Answer, as amended, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages for a sum of approximately $800,000.00 and, alternatively, based on a well-managed theory of damages; pre and post-judgment interest at the statutory rate; attorneys' fees; expert fees; forum fees; punitive damages; and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, as amended, Respondent requested that the Panel dismiss all claims without prejudice following the filing of a motion to dismiss claims as ineligible for arbitration under Rule 12206 of the Code of Arbitration Procedure ("Code"); if the eligibility motion is not granted, dismissal of the Statement of Claim with prejudice at the close of Claimants' proofs; award Respondent reimbursement from Claimants of any FINRA arbitration, forum or hearing fees paid; assess forum fees against Claimants, and award Respondent reimbursement of its attorneys' fees and such other relief as this Panel deems appropriate. Respondent further requested expungement on behalf of Unnamed Persons Stephen Sperling, Cataldo Panici, and Anthony Jovanovich of all references to Occurrence Numbers 2321187, 2321168, and 2321088 from Central Registration Depository ("CRD") registration records (CRD Numbers 3061073, 2112617, and 2948544, respectively).

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On June 13, 2024, Respondent filed a Motion to Separate Claimants and Their Improperly Joined Claims into Six Arbitrations ("Motion to Sever"). On June 24, 2024, Claimants filed an Opposition to Respondent's Motion to Sever. On June 27, 2024, Respondent filed a Reply in

Support of its Motion to Sever. In an Order dated July 1, 2024, the Panel denied the Motion to Sever.

On August 23, 2024, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code. On September 11, 2024, Claimants filed a response in opposition to the Motion to Dismiss. On September 16, 2024, Respondent filed a Reply in Support of the Motion to Dismiss. On October 23, 2024, the Panel heard oral arguments on the Motion to Dismiss. In an Order dated October 23, 2024, the Panel granted the Motion to Dismiss on the following grounds:

> The Panel finds that the risks attendant to the illiquid alternative investments at issue were fully disclosed at the time the investments were purchased and that there were no intervening events to trigger another six-year period for submission to FINRA arbitration. Since more than six years have elapsed from the dates of purchase to the request to arbitrate, the claims are not eligible for submission to arbitration under FINRA Rule 12206 Time Limits. The claims are dismissed without prejudice.

On October 24, 2024, Claimants filed correspondence withdrawing their claims without prejudice, Respondent filed correspondence in opposition to Claimants' request to withdraw their claims without prejudice, and Claimants filed correspondence in support of their request to withdraw their claims without prejudice. The Panel's determination is as follows:

Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

Accordingly, the Panel made no determination with respect to expungement of references to Occurrence Numbers 2321187, 2321168, and 2321088 from CRD registration records.

AWARD

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented at the prehearing conference on October 23, 2024, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety pursuant to Rule 12206 of the Code, and the Panel did not consider Respondent's request for expungement on behalf of Unnamed Persons Stephen Sperling, Cataldo Panici, and Anthony Jovanovich of Occurrence Numbers 2321187, 2321168, and 2321088 from registration records maintained by the CRD.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$	1,740.00
Expungement Filing Fee	=$	1,600.00
Expungement Filing Fee	=$	1,600.00
Expungement Filing Fee	=$	1,600.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=$	2,625.00
Member Process Fee	=$	5,225.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ $1,325.00/session		=$	2,650.00
Pre-Hearing Conferences:	April 8, 2024	1 session	
	October 23, 2024	1 session	
Total Hearing Session Fees		=$	2,650.00

The Panel has assessed $1,987.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed $662.50 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

John William Kenesey	-	Public Arbitrator, Presiding Chairperson
Alden Sharp Adkins	-	Public Arbitrator
Lisa M. Lilly	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

John William Kenesey — **10/31/2024**

John William Kenesey
Public Arbitrator, Presiding Chairperson

Signature Date

Alden Sharp Adkins — **10/31/2024**

Alden Sharp Adkins
Public Arbitrator

Signature Date

Lisa M. Lilly — **10/31/2024**

Lisa M. Lilly
Public Arbitrator

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

October 31, 2024
Date of Service (For FINRA Dispute Resolution Services use only)

EXHIBIT D

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Victor Ravelo

vs.

Respondents
Independent Financial Group, LLC
Brian Zimmerman

Case Number: 25-01910

Hearing Site: San Diego, California

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

Claimant Victor Ravelo ("Claimant") appeared pro se.

For Respondents Independent Financial Group, LLC and Brian Zimmerman (collectively, "Respondents"): Natalie P. Vance, Esq., Klinedinst PC, Sacramento, California.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2025.
Amended Statement of Claim filed on or about: September 16, 2025.
Claimant signed the Submission Agreement: September 11, 2025.

Statement of Answer filed by Respondents on or about: December 13, 2025.
Independent Financial Group, LLC signed the Submission Agreement: November 13, 2025.
Brian Zimmerman signed the Submission Agreement: November 13, 2025.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: unsuitability and lack of gains. The causes of action relate to an investment in a real estate investment trust ("REIT").

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested compensatory damages in the amount of $275,000.00.

In the Statement of Answer, Respondents requested:

1. Claimant take nothing by way of their action;
2. Expungement of this matter (Occurrence Number 2441036) from the Central Registration Depository ("CRD") registration records for Brian Zimmerman (CRD Number 2401501);
3. Respondents be awarded costs of arbitration incurred herein; and
4. Such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On March 13, 2026, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On April 13, 2026, Claimant filed a response opposing the Motion to Dismiss. On April 14, 2026, Respondents filed a reply in support of the Motion to Dismiss. On April 16, 2026, the Panel heard oral arguments on the Motion to Dismiss. The Panel hereby grants the Motion to Dismiss pursuant to Rule 12206 of the Code for the reasons stated in the Findings section below.

Respondents' Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

Accordingly, the Panel made no determination with respect to expungement of references to Occurrence Number 2441036 from CRD registration records.

FINDINGS

This REIT investment was entered into in 2014 by Claimant, who signed both a Subscription Agreement and a Suitability Questionnaire on which risks, possible loss, lack of liquidity and suitability were all disclosed at some length, initialed by Claimant and then signed by him, over a separate caution that read: "DO NOT sign this document unless you have read and thoroughly understand the information contained herein." Claimant styled himself as having experience with REITs and a "moderate" risk tolerance.

Claimant admitted he did not read the documents he signed but relied entirely on his "longtime friend" the broker Mr. Zimmerman, who allegedly assured him that everything was fine, even when his account was frozen in 2018, more than seven years before filing the complaint. Claimant received monthly statements of his REIT account and was aware of fluctuations in value, but took no action. There is no excuse for delayed filing of a complaint for having relied on alleged broker

reassurances despite the plain language of signed documents. And unsuitability is determined at the time of the investment and is not suspended for late discovery or market performance. Claimant was given the information to make that determination himself at inception, but chose to ignore all cautions. We conclude that waiting from 2014 until 2025 to file a claim against the broker and his agency is outside the timeline allowed for a claim under FINRA Rule 12206. A separate claim regarding an annuity that terminated in 2016 and was included in the Statement of Claim here was not supported at the pre-hearing conference and is also dismissed.

AWARD

After considering the pleadings, the testimony and evidence presented at the April 16, 2026 recorded pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice pursuant to Rule 12206 of the Code.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$	1,790.00
Counterclaim Filing Fee	=$	2,000.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees
Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Independent Financial Group, LLC is assessed the following:

Member Surcharge	=$	2,640.00
Member Process Fee	=$	5,040.00

Hearing Session Fees and Assessments
The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ $1,690.00/session		=$	3,380.00
Pre-Hearing Conferences:	January 12, 2026 1 session		
	April 16, 2026 1 session		
Total Hearing Session Fees		=$	3,380.00

The Panel has assessed $1,690.00 of the hearing session fees to Claimant.

The Panel has assessed $1,690.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Kirtley M. Thiesmeyer	-	Public Arbitrator, Presiding Chairperson
Lei-Chala I Wilson	-	Public Arbitrator
David Lewis Vialpando	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Kirtley M. Thiesmeyer — **04/24/2026**

Kirtley M. Thiesmeyer
Public Arbitrator, Presiding Chairperson

Signature Date

Lei-Chala I Wilson — **04/24/2026**

Lei-Chala I Wilson
Public Arbitrator

Signature Date

David Lewis Vialpando — **04/24/2026**

David Lewis Vialpando
Public Arbitrator

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

April 27, 2026
Date of Service (For FINRA Dispute Resolution Services use only)