

From: [Tosh Grebenik](#)
To: [Comments, Public](#)
Subject: Public Comment - Reg Notice 26-06
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Sir/Ma'am –

Thank you for this opportunity.

I would like to give public comment on a few topics:

1. Arbitrator Discretion in Hearings: I think arbitrators should be required to work on a closed-universe case. In other words, they should not be permitted to do outside research or bring up issues that have not been brought up by the Parties. This is not to say that the arbitrators cannot bring their own prior knowledge or ask questions, but they should not be permitted to make decisions on rules or topics that have not been first brought up by the Parties.
 - a. One example would be FINRA Rule 12206 or 13206. If the Parties do not bring up this rule, the Panel should not be permitted to render its decision based on this rule.
2. No Threshold for Complaints: There should be a minimum threshold for when a customer complaint is publicly displayed on a financial advisor's record. This can be done in one of a few ways:
 - a. Option one: FINRA can do an initial evaluation. Similar to the process for lawyers, if a bar complaint is filed, the bar association does the initial determination. If the bar association finds merit, then the case is further investigated and a case is opened. If no merit is found, then the complaint is dropped and nothing goes on the record of the attorney.
 - b. Option two: the case proceeds down the arbitration path. After the Panel is put in place, there is a decision point (possibly as part of the award after the hearing) whereby the Panel determines if it should be publicly displayed. This is somewhat similar to the U5 process. If the firm determines that the answer to question 7F is yes, then it publicly displayed. If the answer is no, then it is not publicly displayed. Maybe for the customer complaints, some would be filtered to the archived or Z status instead of being displayed publicly.
 - c. Rationale: FINRA and plaintiff organizations like PIABA dislike the success rate of expungements. What is not taken into account here is that there is no minimum threshold for complaints. This completely undermines the system and the legitimacy of the real complaints. As an example, if there are two financial advisors, each with one customer complaint. Financial Advisor A recommended that the client invest in Auction Rate Securities (ARS). At the time, it was thought to be a blue-chip, highly liquid, safe investment. Financial Advisor B recommended that the client,

an elderly woman in her retirement, invest in 10 different annuities and highly risky small cap international funds all because they have much higher commissions. It is almost impossible for a random investor to adequately compare those two financial advisors. In all likelihood, a Panel or deciding body would have determined that Financial Advisor A would not need to have the complaint publicly disclosed while that same Panel or deciding body would determine that Financial Advisor B should have to disclose it publicly. This would drastically reduce the success rate and effectiveness of expungement claims and make the disclosure system much more valuable for potential investors.

I realize that FINRA will never actually make these changes and to be honest, probably won't even consider them. That being said, thank you for letting me state my opinion.

Respectfully,

Tosh Grebenik

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