

May 1, 2026

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

Ms. Mitchell:

Introduction

The law firm of UB Greensfelder LLP (“UBG”) respectfully submits this letter in response to FINRA’s Regulatory Notice 26-06 in which FINRA requested comments regarding the FINRA arbitration process. While we routinely represent member firms and registered representatives in FINRA arbitrations, this letter does not reflect the opinions of any such clients and only represents opinions of UBG attorneys who regularly handle FINRA arbitrations. We have chosen to comment on several of what we believe to be key areas on which FINRA requested comments.

Eligibility Rules

We believe that FINRA Rules 12206 and 13206 (the “Eligibility Rules”) should expressly provide that they are statutes of repose, barring claims based on securities transactions or wrongful conduct that occurred more than six years before a claim is filed. The Eligibility Rules, as currently written, create confusion and disagreement among parties by failing to clearly and declaratively define when the six-year clock begins to run. Specifically, the Eligibility Rules provide that claims are not eligible for FINRA arbitration where “six years have elapsed from the *occurrence or event* giving rise to the claim.” However, the Eligibility Rules do not define – and FINRA does not provide clear guidance regarding – what exactly constitutes the “occurrence or event.”

In nearly every case, the party who filed an eligibility motion argues that the “occurrence or event giving rise to the claim” is the purchase of the investment at issue (for customer investment dispute cases) or the date a firm files a Form U5 (in Form U5 defamation cases), while the party opposing an eligibility motion argues that there was ongoing harm and/or wrongful conduct that prevented the party from discovering the alleged wrongful conduct until a time that is within six years of the claim being filed. FINRA’s lack of guidance regarding what constitutes the “occurrence or event giving rise to the claim” therefore results in inconsistent and unpredictable decisions on eligibility motions.

Conversely, treating the Eligibility Rules as statutes of repose would likely result in reliably consistent and predictable decisions on eligibility motions. Of course, any party whose claim is dismissed under either of the Eligibility Rules would have the right to bring the claim in a court of competent jurisdiction (where any applicable statutes of limitations would apply), such that dismissing the claim in FINRA arbitration would not deprive the party from adjudication of the claim on the merits.

CHICAGO

CINCINNATI

CLAYTON, MO

CLEVELAND

COLUMBUS, OH

NEW YORK

SO. ILLINOIS

ST. LOUIS

UBGLAW.COM

Ms. Jennifer Piorko Mitchell
May 1, 2026
Page 2

At a minimum, if FINRA decides against amending the Eligibility Rules to provide that they are statutes of repose, we believe that FINRA should clearly define “occurrence or event” in a manner that can be consistently interpreted and applied in every case.

Motions to Dismiss

In its July 11, 2025 public letter to FINRA, the Securities Industry and Financial Markets Association (“SIFMA”) identified certain inefficiencies with the current motion to dismiss process in FINRA arbitration. Specifically, SIFMA highlighted that FINRA Rules 12504(a) and 13504(a) (which govern motions to dismiss prior to the conclusion of a party’s case in chief), and the aforementioned Eligibility Rules, mandate that parties who wish to file a motion to dismiss (whether under Rules 12504 or 13504 or the Eligibility Rules), must first file a statement of answer. This unnecessarily increases costs by requiring defending parties to first prepare an answer (which is often a significant undertaking that would otherwise not be required if the motion to dismiss were granted). Moreover, requiring a party to file a statement of answer before filing a motion to dismiss may also needlessly extend the period of time a case otherwise subject to dismissal remains pending (because the responding party must first prepare and file an answer before filing the motion to dismiss). We agree with SIFMA that FINRA should amend its rules to allow parties to file a motion to dismiss before filing a statement of answer and to toll the deadline to file an answer until the motion to dismiss has been decided.

We also believe that FINRA should update its guidance to make clear that FINRA does not “discourage” motions to dismiss under the Eligibility Rules. When opposing motions to dismiss pursuant to the Eligibility Rules, Claimants’ counsel often improperly point to the FINRA Rules and guidance regarding motions to dismiss *under Rules 12504 and 13504* and argue that FINRA discourages *all* motions to dismiss (including motions to dismiss pursuant to the Eligibility Rules). That is not correct and that often misleads arbitrators. Moreover, if a remedy is made available under forum rules, there should neither be encouragement or discouragement to invoke it.

Punitive Damages

We believe that FINRA should amend its rules to permit member firms in pre-dispute arbitration agreements to preclude recovery of punitive damages where permitted under applicable law. Currently, FINRA arbitrators may award punitive damages at their discretion (since they are not obligated to follow established law regarding awarding punitive damages), and any such awards of punitive damages are nearly always final and binding given the extreme difficulties of vacating or modifying arbitration awards in court. As such, the current landscape for awarding punitive damages in FINRA arbitrations results in unpredictable and inconsistent awards of punitive damages – which is inherently problematic because it prevents defending parties from reasonably assessing the value of a case or potential exposure.

Ms. Jennifer Piorko Mitchell
May 1, 2026
Page 3

In its July 2025, letter, SIFMA suggested that, rather than allowing arbitrators to award punitive damages in FINRA arbitrations, arbitrators should be reminded that they may refer matters to FINRA Enforcement for investigation and potential disciplinary action. Trained FINRA Enforcement staff members are much better positioned than arbitrators to decide whether a member firm or associated person should be punished or deterred from engaging in similar conduct in the future by being penalized (*i.e.*, the purposes of punitive damages).

In the event FINRA ultimately decides against permitting firms to contractually preclude recovery of punitive damages, FINRA should consider amending its rules to allow parties to impose specific caps on punitive damages awards (*e.g.*, a multiplier of compensatory damages).

Form U5 Defamation Claims

In our experience, member firms take very seriously their regulatory obligation to timely, truthfully, and accurately complete Forms U5, including their regulatory obligation to explain the reason for termination under Section 3 and to accurately respond to Questions 7B and 7F.1. Notwithstanding the fact that firms typically engage in considerable due diligence prior to making such disclosures to ensure their truthfulness and accuracy, firms are routinely sued for defamation in connection with such Form U5 disclosures. The outcomes of Form U5 defamation claims range from denial of the claim, to expungement of the disclosures at issue, to awards of significant compensatory and sometimes punitive damages. In Form U5 defamation cases where arbitrators award damages, claimants are often not required to prove the elements of a defamation claim under applicable state law, and arbitrators may improperly disregard qualified or absolute privileges applicable under state law to member firms. This often results in frustrating and unfair damages awards against member firms.

In order to enter an award of monetary damages in connection with a Form U5 defamation claim, FINRA should require that the arbitrators make specific findings that the alleged defamatory statement is a false statement of fact, and that the statement was made with malice (*i.e.*, that the respondent firm either knew the statement was false or acted with reckless disregard for the truth). Moreover, we believe that FINRA should train arbitrators regarding, and require them to apply, qualified and absolute privileges to defamation claims available under applicable state law. Alternatively, FINRA should implement its own qualified immunity for Form U5 statements (made without malice), which FINRA requires firms to make on Forms U5.

Forum Selection

We agree with SIFMA's prior proposal to allow certain parties to resolve certain claims outside of FINRA arbitration. Such claims include, for example, claims over a specific high-dollar threshold, and/or cases involving institutional investors. Allowing such limited cases to be adjudicated outside of FINRA (including in court through bench trials where jury waivers are

Ms. Jennifer Piorko Mitchell
May 1, 2026
Page 4

permitted under applicable law) would allow FINRA to better allocate resources to focus on administration of typical investor claims, which comprise the vast majority of customer disputes. We likewise agree with SIFMA that FINRA should consider amending its rules to allow parties to contractually agree that intra-industry disputes may be resolved outside of the FINRA forum. Industry disputes do not involve customers and therefore do not implicate FINRA's tenet of investor protection.

Conclusion

UBG sincerely appreciates the opportunity to provide these comments regarding the FINRA arbitration process. We likewise commend FINRA for its serious consideration of amending and/or updating its rules and arbitration procedures to implement changes in response to the comments it receives. We are optimistic that any changes FINRA decides to make will improve the efficiency and fairness of the FINRA arbitration process for all parties.