WealthForge Securities, LLC

Member FINRA / SIPC

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April 13, 2026

Jennifer Piorko Mitchell
Office of the 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:

WealthForge Securities, LLC ("WealthForge" or "we") appreciates the opportunity to comment on Regulatory Notice 26-06 (the "Notice") to continue to enhance the transparency, impartiality, and efficiency of FINRA's arbitration forum for all participants. We believe that FINRA's rule modernization effort is especially important when it comes to the dispute resolution process. We note that as of April 13, 2026, there have been more new case filings filed so far this year than were filed in the entirety of 2025.[1]

WealthForge is a FINRA member broker-dealer that specializes in the distribution of alternative investments, including Delaware Statutory Trusts ("DSTs"), private placements, and other Regulation D offerings. Our business model is that of a "wholesale" or "distributing" broker-dealer: we facilitate transactions between investors and issuers, providing due diligence, suitability review, and transaction execution services. We do not serve as the sponsor, manager, or issuer of the securities we distribute, nor do we prepare our clients' offering documents.

[1] FINRA, *Dispute Resolution Services Statistics*, https://www.finra.org/arbitration-mediation/dispute-resolution-services-statistics.

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 claimants' counsel systematically exploit procedural gaps to convert broker-dealers into after-the-fact insurers of investment performance and issuer conduct. The comments that follow are rooted in direct experience and are intended to be constructive. We urge FINRA to evaluate these implications thoroughly.

I. The Core Problem: Broker-Dealers as Involuntary Insurers of Issuer Performance

Before addressing the specific sections of the Notice, WealthForge believes it is essential to identify the overarching problem that pervades FINRA arbitration in the alternative investment space. That problem is this: **claimants' counsel have effectively transformed FINRA arbitration into an insurance recovery mechanism in which the distributing broker-dealer is treated as the guarantor of issuer performance and market outcomes while the broker-dealers are playing a limited role of connecting issuers with investors.**

The fact pattern we typically encounter is as follows. An investor purchases an alternative investment (a DST, a private placement, or similar product). The investment is properly vetted at the time of the transaction. Based on FINRA's guidance,[2] the firm has conducted due diligence on the issuer and affiliated entities, the offering documents, independently obtained claim-corroborating documents, and the sponsor; conducted a suitability review of the investor (which includes both accreditation and sophistication); and provided appropriate disclosures. Those disclosures typically note, in detail, the potential loss of invested money.

Then, months or years later, an event occurs that could not have been foreseeable at the time of the transaction, absent speculation during the due diligence process. For example, the issuer or sponsor engages in fraud, mismanagement, or other misconduct that was not occurring—and could not have been detected—at the time of the transaction or an event occurs beyond the market risk of commercial real estate (e.g., increased taxes, insurance, natural disaster, pandemic). The investment fails. The investor suffers losses. And since the issuers (who received the invested moneys) are often insolvent - the focus falls on the broker-dealers.

At this point, claimants' counsel enters the picture. The attorneys identify that the issuer or sponsor (i.e., the actual wrongdoer) is either judgment-proof, in bankruptcy, or otherwise uncollectable. Rather than accept this reality, claimants' counsel file FINRA arbitration claims against the distributing broker-dealer, alleging that the firm failed to conduct "reasonable due

[2] FINRA Regulatory Notice 10-22 (April 2010); FINRA Regulatory Notice 23-08 (May 2023).

diligence" and therefore "should never have sold" the security. The claims are styled as a due diligence failure, but in effect, these are demands that broker-dealers serve as guarantors for investors.

This is not what the regulatory framework contemplates. A broker-dealer's obligation is to conduct reasonable due diligence at the time of the transaction, make suitable recommendations, and provide fair disclosure of known material risks.[3] It is not to warrant against future fraud by the sponsor or key persons, guarantee market performance, or serve as an insurer of last resort when the actual wrongdoer is unavailable. Yet, that is what is happening all too often in FINRA's arbitration forum.

II. The Eligibility Rule Should Be a Strict Statute of Repose (Section B(i))

WealthForge strongly supports amending Rules 12206 and 13206 to establish the six-year eligibility rule as a strict statute of repose, measured from the date of the transaction. The current framework, which permits arbitrators to exercise discretion in determining when the six-year period begins to run, has been exploited by claimants' counsel through "discovery rule" and "ongoing damages" theories to bring stale claims that should be time-barred.

A strict repose standard is essential for two reasons. First, it provides certainty. Broker-dealers must be able to predict and manage their risk exposure. When claimants' counsel can argue that the six-year clock did not begin running until the investor "discovered" the alleged harm, which may be years after the transaction, there is no meaningful outer boundary on liability. Second, a strict repose standard aligns with the original purpose of the eligibility rule, which was informed by the SEC's requirement that broker-dealers maintain transaction records for six years. If the records retention requirement has a defined endpoint, the eligibility rule should as well.

WealthForge further recommends that FINRA front-load the eligibility determination. Eligibility should be resolved by the Director or by the panel at the earliest possible stage (i.e., before the Answer is due) rather than requiring the respondent to suffer the expense of answering, engaging in discovery, and preparing for hearing before the threshold question of eligibility is addressed.

III. FINRA Should Require Demonstrated, Cognizable Damages at the Time of Filing

[3] 17 C.F.R. § 240.15l-1(a); FINRA Rule 2111 (2020); FINRA Rule 2210 (2019); FINRA Rule 3110 (2024).

A critical gap in the current FINRA arbitration framework is the absence of any requirement that a claimant demonstrate cognizable, realized damages at the time a claim is filed. Under current practice, investors are permitted to file arbitration claims when they have suffered no actual loss, or when the loss (which a claimant will generally argue includes unpaid voluntary distributions) is entirely speculative and contingent on future events. This is fundamentally inconsistent with basic principles of justiciability and ripeness that apply in every other adjudicatory forum.

The consequences of permitting unripe claims are significant. An investment that has declined in paper value but has not been liquidated, or that is still generating income, has not produced the type of realized loss that should be actionable. Similarly, an investment that is performing in line with its disclosed risk profile has not produced damages attributable to any alleged due diligence failure by the broker-dealer. Yet claimants' counsel file claims in these circumstances because the filing itself and the attendant defense costs create settlement leverage regardless of whether a claim has merit or whether actual damages exist.

WealthForge recommends that FINRA amend its rules to require that a statement of claim include a particularized allegation of realized, cognizable damages and that the panel be authorized to dismiss and/or suspend (or the Director be authorized to screen out) claims that fail to allege actual loss. This is not a high bar; it simply requires that the claimant have suffered some identifiable harm before invoking the arbitration forum. Requiring demonstrated damages at the time of filing would reduce the volume of speculative claims, conserve FINRA's administrative resources, and eliminate one of the mechanisms claimants' counsel use to extract nuisance settlements.

IV. Damages Calculations Must Account for the Investor's Full Portfolio of Similar Investments

A recurring and deeply problematic practice by claimants' counsel involves the selective presentation of investment outcomes – what is commonly referred to as "cherry-picking." When an investor purchases multiple alternative investments through a broker-dealer, often as part of a deliberate diversification strategy, claimants' counsel will isolate the one investment that underperformed or failed and file a claim solely on that position, while ignoring the investments in the same category that met or exceeded expectations.

This practice distorts the damages analysis and fundamentally misrepresents the investor's experience. If an investor concurrently purchased four DSTs through WealthForge as part of an exchange, and three performed in line with expectations while one suffered losses due to sponsor misconduct, the investor's actual economic outcome is materially different from what the claim portrays. The investor made a diversified allocation decision – precisely the type of

prudent investing that broker-dealers encourage and that is beneficial to the investor – and the aggregate result of that decision must be considered when evaluating whether the broker-dealer's due diligence and suitability determinations were reasonable.

WealthForge recommends that FINRA adopt rules or guidance requiring that damages calculations in arbitration account for the claimant's full portfolio of similar investments brokered by the same firm during the relevant period. At a minimum, FINRA should expressly permit respondents to introduce evidence of offsetting gains from related investments as a mandatory element of the damages analysis and should instruct arbitrators that a single underperforming position within a diversified portfolio does not, standing alone, establish that the broker-dealer's recommendations were unsuitable or its due diligence was deficient.

V. FINRA Should Establish a Safe Harbor for Reasonable Due Diligence

Perhaps the most impactful reform FINRA could undertake would be the establishment of a defined safe harbor for broker-dealer due diligence. Under the current framework, there is no bright-line standard for what constitutes "reasonable" due diligence on a securities offering. This ambiguity is the engine that drives the claims we have described: because no defined standard exists, claimants' counsel can always argue, after the fact and with the benefit of hindsight, that the broker-dealer "could have done more" or "should have detected" the issuer's future misconduct.

WealthForge proposes that FINRA establish a due diligence safe harbor that provides greater clarity for the elements of reasonable due diligence for the distribution of securities, particularly alternative investments and private placements. Notice to Members 10-22 suggests that a reasonable diligence program may include, among other elements: independent review and analysis of offering documents and subscription materials; background investigation of the issuer, sponsor, and their principals; financial analysis of the issuer's financial condition and the offering's economic assumptions; verification of regulatory filings and compliance history; assessment of material risk factors and their adequate disclosure; and ongoing monitoring during the distribution period. Further, due diligence conducted on any given offering should be dependent on facts and circumstances unique to the offering, sponsor, or issuer. However, in WealthForge's experience, claimants' counsel consistently questions what "reasonable" diligence should or should have looked like – even when a due diligence program meets, or even exceeds, the elements described in Notice to Members 10-22. Therefore, a due diligence safe harbor would provide further clarity to all parties regarding reasonable diligence.

If a broker-dealer demonstrates compliance with the safe harbor elements, a rebuttable presumption should arise that the firm conducted adequate due diligence. The burden would then shift to the claimant to identify a specific, particularized deficiency in the firm's diligence

process—not merely to allege that the investment failed and therefore the due diligence must have been inadequate. This is a causation standard: the claimant must show that a specific due diligence failure that was unreasonable at the time that the diligence was conducted, had it been corrected, would have resulted in the broker-dealer declining to offer the security or the investor declining to purchase it.

A safe harbor would accomplish several objectives simultaneously. It would provide broker-dealers with a clear, actionable standard against which to measure their compliance. It would short-circuit the current practice of filing broad, conclusory due diligence claims and leveraging defense costs to extract settlements. It would give arbitration panels, particularly those without a securities background, a concrete framework for evaluating due diligence allegations rather than relying on subjective, hindsight-driven assessments. And it would align FINRA's arbitration framework with the regulatory reality that due diligence is necessarily an exercise conducted at a point in time, based on information available at that time, and cannot reasonably be expected to predict future misconduct by third parties.

VI. The Grounds for Prehearing Motions to Dismiss Should Be Expanded (Section B(ii))

The current three grounds for prehearing motions to dismiss under Rules 12504 and 13504 are inadequate to address the types of claims WealthForge and similarly situated broker-dealers face. WealthForge recommends the addition of a fourth ground: where the claim rests entirely on allegations of broker-dealer due diligence failures, but the harm to the investor was caused by post-transaction issuer fraud or misconduct that no reasonable due diligence process, conducted at the time of the transaction, could have detected.

This proposed ground is framed as a causation pleading standard, not a substantive immunity. It does not insulate broker-dealers from liability for genuine due diligence failures. It simply requires the claimant to allege a causal nexus between the claimed due diligence deficiency and the investor's loss. Where the sole cause of the loss is post-transaction fraud by the issuer—conduct that was not occurring and could not have been detected at the time of the offering—the broker-dealer's due diligence is not the proximate cause of the harm, and the claim should be subject to early dismissal.

In conjunction with the safe harbor proposal described above, this expanded dismissal ground would create a coherent framework: if the broker-dealer complied with the safe harbor and the claimant cannot identify a specific diligence deficiency that, if corrected, would have prevented the loss, the claim should not proceed to a full evidentiary hearing. This would dramatically reduce the settlement coercion dynamic that currently pervades FINRA arbitration in the alternative investment space.

VII. Manifest Disregard for the Law and the Need for Explained Decisions and an Appeals Mechanism (Sections I and H.6)

WealthForge's experience in FINRA arbitration has included multiple instances in which arbitration panels have displayed what can only be described as a manifest disregard for applicable law. For example, panels have declined to apply clear statutes of limitations. Panels have imposed liability on the distributing broker-dealer for losses caused entirely by post-transaction issuer fraud, without identifying any causal nexus to a specific due diligence deficiency. Panels have fashioned compromise awards – the so-called "split the baby" outcome – in which the panel acknowledges that the issuer was the primary wrongdoer but nonetheless finds the broker-dealer partially liable, apparently out of sympathy for the defrauded investor rather than any principled application of law or regulation.

This pattern reflects a systemic problem. "Manifest disregard for the law" is one of the narrow grounds under the Federal Arbitration Act on which courts may vacate an arbitration award. However, the standard requires a showing that the arbitrators knew the applicable law, understood it, and deliberately chose to ignore it. Because FINRA panels are not required to explain their reasoning, this standard is virtually impossible to meet. The very absence of a written rationale makes it impossible to demonstrate on the record that the panel consciously disregarded the law, even when their conduct during the hearing makes this apparent.

This creates a dangerous circularity: panels can disregard the law precisely because they are not required to explain their decisions, and the absence of explained decisions makes it impossible to challenge a panel's manifest disregard through the only available review mechanism. The result is an arbitration forum in which panels are effectively unaccountable for legal errors, and respondents have no meaningful recourse when panels substitute equitable impulses for principled legal analysis and judgments.

A. Mandatory Explained Decisions.

WealthForge strongly supports requiring explained decisions in all FINRA arbitration cases, or at a minimum in all cases in which damages are awarded. The explained decision should be required to include, at a minimum: a causation analysis identifying the specific conduct by the respondent that the panel finds proximately caused the claimant's loss; an allocation of fault among the parties and any non-parties (including the issuer or sponsor); and the methodology used to calculate damages. This requirement would make manifest disregard visible and reviewable (where available). It would also discipline panel decision-making by requiring arbitrators to articulate in writing why the broker-dealer is causally responsible for losses inflicted by a third party. Many "split the baby" awards would not survive this requirement, because the panel would be unable to articulate a principled basis for imposing liability on the

broker-dealer absent a specific, identifiable due diligence failure with a causal connection to the harm.

B. Arbitration Appeals Process.

WealthForge supports the development of an appellate mechanism within FINRA's arbitration forum. This mechanism should not be limited to punitive damages awards, as contemplated by Section H.6 of the Notice. It should extend to eligibility determinations, causation findings that are facially inconsistent with explained decisions, and awards that reflect manifest disregard for established legal principles. An appellate process, combined with mandatory explained decisions, would create the transparency and accountability that the current system lacks. It would also protect FINRA's institutional credibility: if the arbitration forum develops a reputation for panels that disregard applicable law in favor of equitable impulses, it undermines confidence in the forum for all participants.

VIII. Arbitrator Training Must Address Causation, Time-of-Transaction Analysis, and Alternative Investments (Section E)

Many of the problems described in this letter—the "split the baby" dynamic, the failure to apply statutes of limitations, the imposition of liability based on hindsight—stem at least in part from arbitrators who lack adequate training on the legal and analytical frameworks that govern broker-dealer due diligence claims. WealthForge recommends that FINRA implement enhanced, mandatory training for arbitrators that addresses the following areas:

A. Causation in due diligence claims.

Arbitrators should understand that a due diligence claim requires proof of a causal nexus between a specific diligence deficiency and the claimant's loss. The fact that an investment failed does not, standing alone, establish that the broker-dealer's due diligence was deficient, and the failure of an investment due to post-transaction issuer misconduct does not establish that the broker-dealer's pre-transaction diligence was the cause of the loss.

B. Time-of-transaction analysis.

Due diligence is evaluated based on information available at the time of the transaction, not in hindsight. Arbitrators should be trained to resist the natural cognitive bias toward evaluating pre-transaction conduct through the lens of post-transaction outcomes. The question is not whether the broker-dealer "should have known" that the issuer would later commit fraud; the question is whether the broker-dealer's diligence, measured against the information available at the time, met a reasonable standard.

C. Alternative investment structures.

DSTs, Regulation D offerings, and other alternative investments have distinct characteristics that differentiate them from publicly traded securities. Arbitrators who lack familiarity with these structures may apply inappropriate analytical frameworks or make assumptions about the broker-dealer's role and obligations that do not reflect the realities of how these products are distributed.

FINRA has expressed concern that training on substantive legal principles could compromise its neutrality as the forum administrator. WealthForge respectfully submits that training arbitrators on foundational principles of causation and the time-of-transaction standard is not substantive advocacy – it is procedural competence. An arbitrator who does not understand that due diligence is evaluated at the time of the offering, or who does not understand the distinction between proximate cause and but-for cause, is not equipped to decide a due diligence case. Training on these principles is no more a departure from neutrality than training on the eligibility rule itself.

IX. Forum Selection and Alternative Investments (Section A(i))

WealthForge supports amending Rule 12200 to allow broker-dealers and customers to contractually agree, in advance, to resolve disputes in alternative fora for claims above a specified dollar threshold or involving certain categories of products, such as alternative investments and private placements. These products are inherently 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.

Alternatively, if FINRA retains mandatory arbitration for these disputes, FINRA should require that panels adjudicating claims involving alternative investments include at least one arbitrator with demonstrated expertise in the relevant product category. The current system, in which three arbitrators with no particular background in DSTs or private placements may adjudicate a complex due diligence dispute involving these products, does not ensure that all parties are treated equitably in an efficient and transparent arbitration forum.

X. Settlement Coercion, Cost Asymmetry, and the Economics of Nuisance Claims (Section M)

The structural features of FINRA arbitration create a pronounced cost asymmetry that aggressive claimants' counsel understand and deliberately exploit. The cost of defending a due

diligence claim through hearing is substantial: often $200,000 or more in legal fees, expert costs, and forum fees, and expenses regardless of the claim's merits. Claimants' counsel know this. The calculus is straightforward: file a claim with just enough surface plausibility to survive any threshold screening, and then leverage the respondent's defense costs to extract a settlement that is economically rational for the firm to pay even though the claim has no merit.

This is not arbitration functioning as intended. It is a coercive mechanism that rewards the filing of marginal and meritless claims and punishes broker-dealers who conduct their business properly. The fact that 71 percent of customer cases settle prior to award is not solely a measure of efficient dispute resolution; for firms like WealthForge, it reflects the economic reality that settlement, even of unmeritorious claims, is often less costly than defense.

WealthForge recommends several structural reforms to address this dynamic. First, and most critically, FINRA should adopt a comprehensive cost-recovery mechanism that allows broker-dealers to be made whole when frivolous claims are dismissed at any stage of the proceeding - whether on motions to dismiss, on eligibility grounds, or after hearing. This cost recovery must encompass the full spectrum of expenses that the respondent firms incur in defending the claims, including: FINRA filing and forum fees; arbitrator honoraria and hearing session fees assessed to the respondent; reasonable attorneys' fees; expert witness fees; document production and e-discovery costs; and all other out-of-pocket expenses directly attributable to the defense of the claims. A broker-dealer that has done nothing wrong (e.g., that conducted reasonable due diligence, made suitable recommendations, and provided appropriate disclosures) should not bear the financial burden of defending itself against a claim that never should have been filed. The cost of frivolous claims should fall on those who file them, not on the firms that are forced to defend them. This recovery should be available against claimants' counsel personally where the claim was filed without a reasonable factual or legal basis, as it is the subset of overly aggressive claimants' attorneys who have built a business model around exploiting these procedural loopholes that drives this problem. Holding counsel accountable for the costs they impose on innocent respondents would fundamentally alter the economics of nuisance filings.

Second, FINRA should implement an expedited screening process for claims that, on their face, fail to allege a cognizable theory of liability or fail to allege actual, realized damages.

Third, FINRA should adopt enhanced sanctions, including monetary penalties and potential referral to state bar authorities, for claimants' counsel who engage in a pattern of filing meritless claims that exploit FINRA's procedural framework to coerce settlements from broker-dealer firms that acted in good faith.

XI. Punitive Damages Should Be Subject to Meaningful Limitations (Section H)

WealthForge supports imposing limitations on the availability and amount of punitive damages in FINRA arbitration. At a minimum, FINRA should permit broker-dealers and customers to agree in predispute arbitration agreements, consistent with applicable state law, that any claims are ineligible for punitive damages. Alternatively, FINRA should impose a cap on punitive damages, tied to a reasonable multiple of compensatory damages.

More importantly, if punitive damages remain available, they should be subject to the procedural safeguards that apply in every other adjudicatory forum where such damages are available, including mandatory explained decisions specifically addressing the factual and legal basis for the punitive award, bifurcated proceedings for liability and punitive damages, and appellate review. The current framework, in which an arbitration panel can award punitive damages without explaining its reasoning and without any meaningful avenue for review, does not provide adequate safeguards for member firms or associated persons.

XII. Conclusion

WealthForge appreciates FINRA's willingness to solicit comment on these critical issues. The reforms we have proposed – a strict statute of repose, a due diligence safe harbor, expanded dismissal grounds, mandatory explained decisions, an appellate mechanism, enhanced arbitrator training, a requirement of demonstrated damages, portfolio-based damages analysis, and structural reforms to address settlement coercion – are interconnected and mutually reinforcing. Individually, each would meaningfully improve the fairness and efficiency of FINRA's arbitration forum. Collectively, they would restore the forum to its intended purpose: a fair, efficient, and neutral mechanism for resolving legitimate disputes, not a vehicle for converting broker-dealers into involuntary insurers of investment performance and issuer conduct or misconduct. As a reminder, the broker-dealers are playing a limited role, connecting investors with issuers. Yet, the system puts massive liability on broker-dealers for playing this limited role. A business model whereby industry participants are paid a commission (or a small fraction) but then have complete liability for losses is simply untenable. And this is why so many firms have closed, and more will do so. This will impact the overall capital markets in the United States, as well as our competitiveness.

The through-line of this letter is a simple proposition: a broker-dealer that conducts reasonable due diligence at the time of a transaction, makes suitable recommendations, and provides adequate disclosure should not be held liable when an issuer later commits fraud or an investment underperforms due to market conditions. Post-transaction issuer fraud does not equate to broker-dealer liability absent a specific nexus to an identifiable due diligence deficiency.

We urge FINRA to adopt rules that embody this principle.

Respectfully submitted,

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