

Comments / Response to Notice 26-06

William James

[REDACTED]

Ai1.a No

“Certain types of claims” is too vague, too difficult to identify any and all appropriate types of cases. Could see instances where customers could be deprived of FINRA Arbitration process by “agreeing” to an alternate forum they might not fully understand.

Ai1.b The ones in effect now are appropriate to require special qualifications. Should be open to adding types of disputes if it becomes evident that the lack of ~~special~~ special qualifications can cause improper outcomes.

Ai2. No

Don't see evidence that this has resulted in lack of customer protection or fairness.

Ai3. Yes

For non-institutional customers there needs to be requirements that all parties are represented by competent council.

Ai4. No

If there is no evidence of lack of full disclosure or what they agreed to then this would just slow down the process of final resolution of claims.

Ai5. Yes

FINRA arbitration is still less expensive and faster. FINRA should continue to make changes that enhance both the affordability and speed of the process.

A(ii).1. No

A(ii)2. No

B(i)1. No

The complexity of products in the market can cause damages beyond the statute of limitations if based on date of purchase. In many cases neither the customer or the Registered Rep may have fully understood the embedded variables. Fairness to the customer should outweigh any record keeping burdens. Forum accessibility should not be materially affected.

B(i)2. Yes

Fairness would dictate that the timing of the damages and certainly concealment of harm allow for an extension of the time allowed to seek relief.

B(i)3. No

The example of ongoing fraud is a good one. If claims were barred strictly at the six-year mark then it would create a reward for perpetuating a fraud that avoids detection.

B(i)4. None that I can think of.

B(ii)1. No

C.1. All disputes should include one or more panelists who have subject matter expertise in the matter being arbitrated. The current rules which allow of unlimited strikes of non-public arbitrators by either side tends to lead to a majority of panels being comprised of all public arbitrators. The statistics given bear that out. The statistics of % of awards is not relevant in that each case presents different fact patterns. If there was any evidence of unfair outcomes or awards being made then that would be a relevant statistic. I have served on panels with no other non-public panelists and have felt the lack of industry knowledge was a hinderance to ending up with a fair disposition of the case. Specific types of expertise should be considered given the subject matter of the dispute.

C.2. Keep standards as they are. Consider continuing education requirements to remain on the active roster.

D.1. Yes.

The current system allows the exclusion of the arbitrators who have the most subject matter expertise. Conflicts of interest can and still should be identified and addressed. Non-public arbitrators who are no longer affiliated with the industry should be classified as public arbitrators for the selection process or identified as no longer affiliated.

D.2. Yes.

Allowing the elimination of the arbitrators with the most subject matter expertise seems to go against fairness for either side. If a Claimant or Respondent have a "weak" case then they might naturally try to eliminate the inclusion of people with industry knowledge. The result of this process brings a greater possibility for unfair outcomes.

D.3. Doing this collectively would certainly allow for panels to be selected more efficiently. I do have some concern that an individual parties right to representation might be compromised by forcing the collaboration.

D.4. I think the current numbers are sufficient. Changing the allowable strikes to disallow the exclusion of all non-public arbitrators would help greatly.

E.1. Yes

Much needed. Procedural and substantive elements of the law should be included. Continuing education should be required, and poorly performing arbitrators should be assigned additional training.

E.2. Yes

Both process and substantive elements of the law should be included. Complexity could be judged by FINRA to decide where this would apply. A dollar amount threshold would also make sense.

E.3. Yes

This would result in better informed arbitrators and enhance fairness. Both the law and complex products need to be understood. I don't think it would affect neutrality, but materials used to convey this would have to be carefully screened to eliminate the appearance of any conflicts.

E.4. Some basic continuing education should be required. Additional, voluntary continuing education should be available, and the completed continuing education should be included in the arbitrators' profile to be considered.

F.1. Yes, appropriately tailored

No, do not impose undue burdens

F.2. Yes

Would be helpful and produce more consistency and efficiency

F.3. I think this would be hard to do. Requests beyond the lists will still have to be considered by the panel for relevance and reasonableness.

F.4. NO

Not relevant to the process.

F.5. Yes

Any tools or guidance would be helpful

G.1. Yes

This should be responsive and timely. If it is a single individual, then that person should be available or have a backup contact available. I think it would help with consistency but could cause delays if not administered properly.

G.2. No

This could cause delay and would be hard to implement.

G.3. No

Again, could cause delays.

G.4. Unsure

Anything that makes it easier, more efficient is good.

H.1. Yes

H.2. Yes

If both parties have to agree then it does not impede fairness.

H.3. No

H.4. Yes

This makes sense to highlight that the award of punitive damages is the exception not the rule, and would help both quantify and justify any punitive awards.

H.5. No

I don't see a practical application of this. Until the facts of the case are presented there would be no indication that punitive damages would even be considered.

H.6. No

This would certainly cause delay, and it has already been shown that only a small percentage of cases end up with a punitive award. Having an appeal process would likely guarantee that an appeal would be filed in every punitive award case. Same answer for other appeals.

I.1. No – in all cases

Yes – in certain categories of cases (\$ amount). Would improve transparency.

It could challenge the finality of cases.

I.2. No

I.3. It would slow down the process

I.4. If this impacts an arbitrator's decision to participate, they probably should not be participating.

Yes – additional comp would make sense

I.5. Yes

Any additional guidance or training would be helpful

J.1. As an arbitrator I have never used AAO.

I could see attorneys using it as part of their due diligence in selecting arbitrators.

J.2. Yes, information that has been properly expunged should be removed from the data base. No, awards should not be removed. Maintaining transparency and a full record is important.

J.3. I think the current search capabilities are sufficient.

K.1. I think the system is fair and as the statistics point out there are not many unpaid awards. Looking at some mandatory liability insurance coverage would make sense. I am not for the creation of a pool to pay the awards. Prohibiting associated persons, owners, control entities from remaining in the industry would be a strong deterrent to anyone trying to evade the payments. Getting the SEC and FINRA together on enforcement action would help also. A FINRA rep should not be able to just become a registered investment advisor and maintain licensing, etc.

K.2. NO

K.3. Required insurance coverage.

L.1. Reporting should continue to be complete and accurate. Members do have recourse to contest the information.

L.2. The hard part of this one is "in bad faith with malice in fact". That is a difficult component to prove. At the same time, just showing it is a false statement should allow correction or removal but would not rise to the standard of a monetary award.

L.3. Yes

Providing the legal standards for making an award for defamation is needed in all such cases. I don't think this affects neutrality.

L.4. This is another example of why non-public arbitrators should be on these panels. Having subject matter expertise allows the panel to better identify bad faith, malicious language and the effect on reputation, etc.

L.5. Yes

Keep standards as they are for expungement of employment termination.

L.6. No

This would only make it easier to act in bad faith while reporting.

M.1. -M.7. No comments