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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:

American Global Wealth Management, Inc. appreciates the opportunity to address FINRA arbitration and submits this letter to address foundational deficiencies in FINRA's arbitration framework that now raise serious concerns not merely of procedural inefficiency, but of regulatory misalignment and systemic integrity.

I. Arbitration Has Strayed Outside the FINRA Regulatory Framework

FINRA arbitration is intended to function as a forum for impartial, equitable and consistent application of regulations. It no longer reliably does so.

Panels routinely issue awards without identifying applicable rules, without articulating regulatory standards, and without demonstrating that the governing regulatory framework was applied at all. Outcomes frequently reflect emotional improvisation rather than rule-based adjudication.

This creates a fundamental inconsistency:

- Firms are examined, disciplined, and supervised under specific FINRA rules and federal securities laws
- Yet disputes involving those same rules are adjudicated in a forum that does not consistently apply them

That disconnect is not a negligible procedural defect. It is an insurmountable failure condition. A dispute resolution system operating outside the rule structure it is meant to enforce cannot be defended as a credible component of the securities regulatory architecture.

The claimant's bar has essentially converted FINRA arbitration into claims where respondents are treated as a guarantor of a securities' performance and market outcome similar to an insurer of investor funds.

Even with adequate due diligence, the nature of investing is that firms are unable to predict the outcome of an investment. It seems recovery is often granted the claimant, even though the respondent has conducted due diligence, conducted a proper suitability review of the investor and delivered the appropriate offering documents and disclosures.

If respondents were to preventatively offer customers the guaranteed knowledge of outcomes that arbitration panels have come to expect, the respondents would be in direct violation of FINRA rules.

II. Arbitrator Competence Deficits Create Supervisory Risk

The removal of required industry arbitrators has produced a measurable competency gap. Panels are now routinely tasked with evaluating:

- Suitability (Rule 2111)
- Supervisory systems (Rule 3110)
- Regulation Best Interest (Reg BI)

without sufficient technical grounding.

This has had predictable consequences:

- Misapplication of regulatory standards
- Awards disconnected from compliance obligations
- Inconsistent interpretations across cases
- Manifest disregard of regulations and laws
- Fashioning compromise style awards

From a regulatory perspective, this introduces systemic supervisory risk: firms cannot calibrate compliance programs to a body of decisions that are neither consistent nor anchored in governing rules.

Required Corrective Actions

- Reinstate mandatory industry arbitrator participation
- Eliminate all-public panel elections
- Implement rule-based competency training tied directly to FINRA regulations
- Revise arbitrator guidance to explicitly require application of law and rule—not “equity-first” reasoning

Absent these changes, FINRA arbitration will continue to operate as a non-expert adjudicatory system governing expert-regulated conduct.

III. Absence of Transparency Undermines Regulatory Oversight

FINRA arbitration awards frequently fail to disclose:

- What rules were applied
- Whether any rule was applied
- How damages were calculated

This is not merely a fairness issue. It is a transparency and accountability failure.

Without reasoned awards:

- Firms cannot remediate conduct
- Regulators cannot assess consistency
- The system cannot be audited for integrity

Required Rule Amendments

FINRA should amend Rules 12904 and 13904 to require:

- Identification of specific FINRA rules, statutes, or legal standards applied
- Itemized damage calculations
- Explicit linkage between findings and relief

A standardized form to explain these outcomes would be preferable. Standardization to the utmost extent possible would improve FINRA's ability to internally evaluate the impact of any improvements to the arbitration system both within FINRA and at the Firm level.

IV. The Current Cost Structure Encourages Speculative Litigation

FINRA's filing fee structure is indefensible under any neutral framework:

- Claimant filing fee: ~\$500
- Respondent filing fee: ~\$5,000

This asymmetry:

- Encourages low-cost, high-volume filings
- Imposes immediate financial burden on respondents
- Distorts incentives toward settlement regardless of merit

It is difficult to reconcile this structure with principles of **fair access and balanced process** emphasized by the SEC.

Required Reforms

- Equalize or materially rebalance filing fees
- Implement mandatory fee-shifting for:
 - Frivolous claims
 - Time-barred claims
 - Wrong respondent inclusion

Without cost discipline, arbitration functions as a risk-transfer mechanism rather than a dispute resolution forum.

V. Failure to Filter Meritless Claims Is Structurally Indefensible

FINRA's current posture—discouraging dispositive motions—results in:

- Prolonged litigation of non-viable claims
- Coercive settlement dynamics
- Artificial inflation of forum costs

Federal courts routinely apply Rule 12(b)(6) to eliminate legally deficient claims at the outset. FINRA does not.

There is no defensible policy basis for maintaining a system that knowingly permits meritless claims to proceed through full hearings.

In addition, claimant's "cherry pick" when calculating damages. FINRA should adopt a rule whereby a claimant's entire portfolio with the respondent is considered rather than an isolated investment.

Required Reforms

- Adopt a Rule 12(b)(6)-equivalent motion to dismiss standard
- Permit pre-answer dismissal motions
- Require early adjudication of:
 - Eligibility (six-year rule)
 - Wrong respondent
 - Non-involvement

Failure to implement these reforms preserves a system that extracts cost irrespective of claim validity.

VI. Misapplication of the Six-Year Eligibility Rule

FINRA's six-year eligibility rule is inconsistently applied and frequently treated as a flexible standard rather than what it must be: a **hard statute of repose**.

We strongly recommend that FINRA amend Rules 12206 and 13206 to make it explicit that the six-year eligibility period operates as a statute of repose rather than a statute of limitations.

Under this framework, the eligibility period would run from the date of the transaction or event giving rise to the claim, without tolling based on "discovery," continuing damages, or similar theories.

This clarification would materially reduce the threshold disputes that now dominate eligibility determinations. Claimants frequently attempt to extend the six-year window by asserting ongoing harm or by recharacterizing routine investor communications as "hold" recommendations. These arguments are often unsupported and, in some cases, factually untenable—particularly in the context of alternative investments where liquidity is limited and investors executed contemporaneous acknowledgment documents at the time of purchase. Routine portfolio updates and periodic check-ins should not be repurposed as "hold" recommendations solely to revive otherwise ineligible claims.

Adopting a statute of repose standard also better aligns with the operational realities imposed on broker-dealers. Under SEC Rule 17a-4, firms are required to retain records for six years. As a result, claims brought outside that window frequently lack reliable documentary evidence, irrespective of their underlying merit. Extending eligibility beyond this period creates a structural mismatch between FINRA's forum rules and federally mandated recordkeeping obligations, while simultaneously increasing administrative burdens and associated costs for broker-dealers.

More fundamentally, treating the eligibility rule as a statute of repose is consistent with its core purpose: preventing the arbitration forum from being burdened with stale claims. A clear, transaction-based cutoff would reinforce that objective and eliminate much of the ambiguity that currently invites procedural gamesmanship.

In fairness to claimants, AGWM recognizes that fraudulent concealment by a respondent should not operate to deprive a customer of access to the forum. However, any such allegation should be required to be pleaded with particularity in the statement of claim, rather than asserted in a conclusory manner to avoid application of the eligibility rule.

Allowing claims beyond six years:

- Contradicts settled legal principles
- Prejudices respondents lacking records beyond retention periods
- Introduces uncertainty into eligibility determinations

Required Clarification

- Codify explicitly that the six-year rule is a **statute of repose**
- Prohibit equitable tolling or extension doctrines
- Require dismissal of ineligible claims at the threshold stage
- Impose fee consequences for filing time-barred claims

VII. BrokerCheck Inaccuracies Are Driving Improper Litigation

FINRA's own data infrastructure contributes directly to improper respondent naming. Inaccurate employment records:

- Lead to "shotgun" naming of firms
- Trigger mandatory fees and defense costs
- Create settlement pressure unrelated to liability

This is a system-generated litigation distortion.

Required Reforms

- Enable correction of employment records post-U5
- Require evidentiary support for naming respondents
- Mandate early dismissal of unrelated parties
- Require fee reimbursement where misnaming is clear

VIII. U4 Disclosure Regime Is Being Weaponized

Mandatory disclosure of complaints, regardless of merit, creates:

- Immediate reputational damage
- Career consequences for registered persons
- Strategic leverage for claimant counsel

This dynamic is widely understood and routinely exploited.

Required Reforms

- Differentiate allegations from findings
- Permit confidential resolution in appropriate cases
- Implement streamlined expungement procedures
- Limit derivative use of disclosures in subsequent actions

Absent reform, the disclosure system functions as a pressure mechanism rather than an investor protection tool.

IX. Absence of an Appeals Process Is No Longer Defensible

FINRA arbitration awards are effectively final—even where:

- Rules are misapplied
- Procedures are violated
- Damages are disproportionate

This is inconsistent with any modern adjudicatory system.

Required Reform

Implement a limited appellate mechanism for:

- Large monetary awards
- Clear procedural or legal error

Without appellate review, the system lacks a critical error-correction function. This is especially important in a time when panels are no longer required to have industry arbitrators and there is a documented history of a clear misapplication of the rules in significant arbitration findings.

X. Mandatory Arbitration Without Contractual Basis Raises Legal Concerns

Compelling arbitration absent agreement is inconsistent with fundamental arbitration principles. Where no arbitration clause exists:

- There is no contractual basis for arbitration
- Forcing arbitration raises legitimate legal and policy concerns

Required Reform

- Permit firms to decline arbitration where no agreement exists
- Allow disputes to proceed in court in such cases

XI. Conclusion: Regulatory Realignment Is Required

FINRA arbitration is no longer operating as a consistent, rule-based extension of the regulatory system. It has evolved into a forum characterized by:

- Inconsistent application of governing rules
- Structural cost imbalances
- Limited accountability
- Procedural inefficiencies

These conditions are not sustainable if FINRA cares anything about keeping small to medium-sized firms among its membership. Larger firms can afford to take these outcomes on the chin and keep moving without making any corrections to how they do business. By contrast, each time one of these frivolous arbitration awards hits a smaller firm, they run the risk of shutting their doors forever. The smaller firms that do survive the awards are often buried in the costs associated with it such as higher premiums, the insurance deductible, compliance consulting costs, etc. Independent representatives frequently decide that it is either too expensive or too risky to remain in the financial services industry in today's climate. This shrinking pool of financial professionals as a direct result of the current arbitration system will have a devastating impact on the average investor's access to financial guidance.

Immediate priorities should include:

- Mandatory inclusion of industry arbitrators
- Enforcement of the six-year statute of repose
- Filing fee rebalancing and fee-shifting
- Rule-based motion to dismiss procedures
- Award transparency requirements
- BrokerCheck data correction mechanisms
- Limited appellate review
- Restoration of contractual arbitration principles

Absent meaningful reform, continued reliance on the current structure risks undermining confidence not only in arbitration, but in the broader regulatory framework it is intended to support.

We appreciate the opportunity FINRA's willingness to solicit comments on these critical issues. Our proposals are interconnected and would help restore the forum to the intended purpose; a fair, efficient, and neutral mechanism for resolving disputes rather than a vehicle for converting broker dealer respondents involuntary insurers of investment outcome or of issuer misconduct/fraud. We welcome further engagement at your request.

Respectfully,



Rachel Faulk
Chief Compliance Officer
American Global Wealth Management, Inc. CRD#7388