DFPG INVESTMENTS

April 30, 2026

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

Re: Comments on Regulatory Notice 26-06

Dear Ms. Mitchell:

DFPG Investments, LLC ("DFPG") is a registered broker-dealer and FINRA member firm located in Sandy, Utah.[1] It appreciates being given the opportunity to address and comment on many of the issues raised in Regulatory Notice 26-06. To that end, the specific comments to which DFPG is responding to are detailed below and follow the same labeling as in Regulatory Notice 26-06.

B. Eligibility and Motions to Dismiss

Request for Comment B(i).2: Should FINRA amend the eligibility rule to expressly allow claims in FINRA's arbitration forum that arise from transactions or wrongful events that occurred more than six years prior to the claim being filed if, for example, there are ongoing damages or concealment of the harm? What fairness considerations should be part of evaluating this question?

> **Response:** The six-year eligibility rule under Rules 12206 and 13206 has generated significant uncertainty for our firm. The principal source of that uncertainty is the ongoing ambiguity over whether the rule functions as a statute of repose (and applies a hard cutoff) or as a statute of limitations subject to tolling. This ambiguity creates unpredictable exposure for member firms and leads to drawn-out threshold disputes that delay the merits and increase costs for all parties.
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> We have found that many Rule 12206 motions to dismiss concern claims regarding the sale and purchase of alternative illiquid investments. A review of FINRA awards concerning these types of investments illustrates that there is no consistency or clear guidance to arbitrators regarding the treatment of these matters. Indeed, similar sets of facts, circumstances, and investments, can have wildly different rulings from arbitration panels. Such inconsistent treatment leads to uncertainty and confusion.

[1] The Firm's CRD number is 155576.

To that end, DFPG acknowledges that there may be narrow circumstances—such as documented, affirmative concealment of fraud by the respondent—where a hard cutoff could produce genuinely inequitable results. If FINRA retains any tolling mechanism, we recommend it be expressly limited to cases where the claimant pleads in the statement of claim, ***with specificity***, affirmative acts of concealment by the respondent. This heightened pleading standard is important, as fraud-based tolling arguments will otherwise become part of boilerplate complaint drafting that will result in meritless arguments that will only increase costs for all parties. Otherwise, we recommend that FINRA declare that Rules 12206 and 13206 must be treated as statutes of repose.

Request for Comment B(i).3: Should FINRA amend the eligibility rule to expressly provide that the rule is a statute of repose, barring claims based on securities transactions or wrongful events that occurred more than six years before a claim is filed? How would this approach affect claims related to a continuing occurrence (*e.g.*, allegations of ongoing fraud starting with the purchase of a stock 10 years ago but continuing to a date within six years of the date the arbitration claim was filed)? What fairness considerations should be part of evaluating this question?

Response: We strongly recommend that FINRA amend Rules 12206 and 13206 to expressly provide that the six-year eligibility period is a statute of repose, not a statute of limitations. With regard to FINRA Rule 12206, this means the period should run from the date of the transaction or event giving rise to the claim, without tolling for "discovery" or continuing damages. In practice, a common tactic is to characterize routine investor communications as a "hold" recommendation to argue that the six-year period has not yet run. Such arguments are frequently meritless and, in some cases, factually impossible, particularly with respect to alternative investments for which liquidity options are not readily available and for which contemporaneous acknowledgment documents were signed at the time of investment. Ordinary portfolio updates and check-in conversations should not be susceptible to characterization as a "hold" recommendation simply to extend forum eligibility.

This recommendation is supported by several practical considerations. First, broker-dealers are required by SEC Rule 17a-4 to maintain records for only six years, meaning that records relevant to older claims are often unavailable regardless of whether the claim would otherwise be meritorious. But even more important than creating internal inconsistencies within the governing rules, expanding Rules 12206 and 13206 to cover alleged harm outside this records maintenance window expands the administrative burden of broker dealers, which will in turn increase costs. Second, a statute of repose standard aligns with the explicit purpose of the eligibility rule, which was intended to prevent aged or stale claims from entering the forum. Third, it would dramatically reduce the threshold disputes that currently arise when claimants argue that ongoing damages or "hold" recommendations extend the eligibility window.

In fairness to the claimants, DFPG understands that a respondent's fraudulent concealment of a claim should not deprive a customer of its claims or access to FINRA's arbitration forum. However, FINRA should assert that such fraudulent concealment must be plead in the statement of claim with specificity.

Request for Comment B(i).4: Are there other approaches to the applicability of the eligibility rule that FINRA should consider?

Response: Regardless of whether the substantive standard is clarified, we recommend FINRA amend its rules to allow that eligibility determinations be made by the panel at a preliminary stage, including before the respondent files its response to the statement of claim. Currently, respondents cannot file a Rule 12206 motion to dismiss until after filing their response to the statement of claim. Further, even after a Rule 12206 motion is heard by the full panel, decisions on the motion are often deferred until the final arbitration hearing. When delaying or deferring orders on Rule 12206 motions, firms (and customers) must incur full discovery costs on claims that may ultimately be dismissed as ineligible. Delaying cases that should be dismissed is not an efficient use of party or panel resources and will only incentivize meritless claims. Instead, an early eligibility ruling would benefit all parties by reducing unnecessary costs and by providing certainty.

Additionally, the absence of meaningful consequences in relation to the eligibility rule provides claimants (or rather claimants' counsel) with little incentive to ensure that only bona fide claims are filed. A boilerplate claim without support should be readily resolved under these procedures. Where a claimant seeks to file a stale claim subject to the Rules 12206 or 13206, supporting evidence should be required to be presented within and attached to the statement of claim to defeat dismissal.

Request for Comment B(ii).1: Should FINRA change the timing or expand the circumstances under which the panel may act upon a prehearing motion to dismiss a party or claim? If so, what should those changes be? What customer protection and fairness considerations should be part of evaluating this question?

Response: We recommend that FINRA expand the circumstances under which a panel may act upon a prehearing motion to dismiss to include the following additional categories:

First, as discussed above, claims that are facially barred by the six-year eligibility rule should be dismissible on a prehearing basis, without requiring the case to proceed to the conclusion of the claimant's case on the merits. The current framework—where an arbitrator must effectively hear the full case before ruling on

a legal threshold question—is inefficient and contrary to the purpose of the eligibility rule.

Second, FINRA should employ a process to dismiss matters at the preliminary stage when there is no merit to the claim on its face. This could be a FINRA process or a staff arbitrator that is responsible for reviewing these instances. For example, the following types of claims should be subject to a quick and cost-effective method to obtain dismissal: (1) broker-dealers that are named as respondents solely based on current affiliation of the registered representative (even though the claim is related to a previous firm), (2) broker-dealers being named as respondents in an attempt to resolve a dispute with an affiliated Investment Adviser, (3) and claims related to activities of a registered representative who is part of an unaffiliated Investment Adviser and the claim is related to Investment Adviser business.

Third, FINRA should allow motions to dismiss to be filed before a respondent files their answer to the statement of claim. Under the current framework, even clearly dismissible claims must proceed through the early procedural stages and at least limited discovery before motions to dismiss may be filed, imposing substantial unnecessary costs on respondents and claimants alike.

Fourth, the Firm supports enhancing the current sanctions framework for frivolous motions and would not object to FINRA significantly strengthening those sanctions if data suggests abuse. We simply recommend that the baseline access to motions be expanded to address genuinely meritorious threshold defenses.

Finally, DFPG recommends that FINRA remove the rule which provides, "[m]otions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration." *See*, FINRA Rule 12504(a)(1) and FINRA Rule 13504(a)(1). Early motions to dismiss should not be discouraged. To the contrary, motions to dismiss promote efficiency, cost-savings, and reduce the matters at issue for the final arbitration hearing, which also promotes efficiency.

C. Arbitrator Qualifications

Request for Comment C.1: What is the appropriate composition of the arbitrator roster in FINRA's arbitration forum for customer disputes and intra-industry disputes? Should the arbitrator rosters be the same or different? Should FINRA continue to seek candidates from a variety of backgrounds, or should FINRA be guided more by other considerations such as specific types of expertise?

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Request for Comment C.2: What further changes, if any, should FINRA make to its arbitrator standards? How should FINRA identify minimum employment, experience and educational qualifications that would assure a broad candidate pool while maintaining its decision-making quality? For example, should FINRA

accept equivalent professional certifications or specialized credentials in lieu of a four-year college degree?

Response: We support FINRA's goal of maintaining a diverse arbitrator pool drawing from a variety of professional backgrounds. We disagree, however, with FINRA's implementation of Rule 12403(c)(1)(A), which allows claimants to strike all arbitrators on the non-public list. This does not serve the goal of a fair and effective forum. Conversely, if FINRA requires a non-public arbitrator on the panel, every panel will consequently have more industry experience and expertise.

Finally, as FINRA is aware, many public panelists have limited (or no) award history. The chairperson roster, however, is often very experienced. The Firm suggests that the chairperson roster be increased from 10 arbitrators to 15 and that the two arbitrators from that list be appointed to the panel, with the highest ranked arbitrator serving as chairperson. Alternatively, parties should be allowed to stipulate to two chairperson-qualified arbitrators being appointed to the panel.

F. Discovery

Request for Comment F.1: Are the Document Production Lists in the Discovery Guide appropriately tailored to facilitate the efficient exchange of relevant information in customer arbitrations? Do the Document Production Lists impose burdens associated with overly broad or duplicative document production requirements?

Response: Discovery is consistently the most time-consuming and costly phase of arbitration. We have found that the Document Production Lists in the Discovery Guide are often treated by opposing parties as a floor rather than a ceiling, and lead to additional requests that go well beyond what is reasonably relevant to the dispute. Boilerplate objections that are neither specific nor good faith also lead to considerable delays. These delays impose unnecessary costs and reflect patterns of abuse.

The Firm suggests that the Document Production Lists should be revised to better reflect the actual documents relevant to common dispute types. For example:

- List 1, Item 2 of the Discovery Guide is overbroad and provides an opportunity for abuse of the discovery process. It should be more narrowly tailored, with any additional materials subject to a specific request.

- List 1 Item 10 requires all amendments of the form U4 for the past three years. This provides little value except to try and find non-public disclosures to use as evidence or for solicitation efforts. They are non-public for a reason and provide little, if any, probative value.

The Firm further recommends that customer claimants be obligated to produce documents pursuant to the Document Production List 1 within 30 days of filing their statement of claim or have the case dismissed at the initial pre-hearing conference. These documents should have been available at the time of filing and early discovery will promote efficiency and narrow the claims at issue.

Request for Comment F.3: Should FINRA impose limitations or heightened standards for making discovery requests beyond the Document Production Lists? How should FINRA balance efficiency and cost effectiveness of the arbitration process with parties' desire to obtain more information to present their cases?

Response: We recommend that FINRA impose heightened standards and limits for additional discovery requests. We strongly support FINRA amending its Rules to require that any discovery request beyond the Document Production Lists be accompanied by a showing of specific relevance to the claims or defenses in the proceeding and proportionality to the amount in controversy. This is consistent with modern federal court discovery standards (Fed. R. Civ. P. 26(b)(1)) and would significantly reduce fishing-expedition requests that drive up costs without improving case resolution.

On the same token, the Firm recommends that FINRA place a limit on discovery requests beyond the Document Production Lists. Parties should not need to issue dozens of discovery requests beyond the Document Production Lists. Accordingly, we recommend that FINRA place a limit of, for example, twenty-five requests (including all subparts) for production of documents and information on each party, with additional requests allowed on a motion for good cause, only.

Request for Comment F.4: Should FINRA amend the Discovery Guide—and more specifically, Document Production List 1—to require members and associated persons in customer disputes to produce, on a confidential basis during discovery, documents concerning the existence and extent of any insurance coverage? How would this impact the efficiency and fairness of the arbitration process?

Response: Absent information indicating a firm's inability to satisfy an award, we would strongly oppose any requirement mandating the disclosure of insurance information. Indeed, the availability of insurance coverage has no bearing on the merits of a claim. Such disclosure would provide little probative value while giving claimants an unnecessary and unfair litigation advantage.

M. General Request for Comment

Request for Comment M.1: Are there any other FINRA rules, guidance, operations or administrative processes that should be updated or amended that would help ensure that customers, members and their associated persons are treated fairly and support an efficient and transparent arbitration forum? If so, what has been

your experience with these rules, guidance, operations or processes and what are your suggestions for improving them?

Response: We support the goal of public disclosure, which is designed to help keep an informed public. While this disclosure serves important public interests, it carries significant privacy implications that warrant careful consideration.

First, a customer complaint should not be publicly disclosable until a resolution has been reached. It should be treated similarly to how non-public disclosures are handled under current rules. This would ensure that registered representatives are not unfairly disadvantaged during the period before a complaint is resolved. The current system effectively creates a presumption of guilt before any finding of wrongdoing has been made. Therefore, we recommend that an arbitration claim not be disclosed until the matter has been disposed of (through dismissal, settlement, or award). We further suggest that customer complaints that are denied by the firm, and for which no financial compensation is paid, should not be disclosed.

Second, public disclosure of form U4 disclosures should be more limited in scope. A criminal charge or conviction that does not pertain to one's veracity should not be publicly reported. While such a charge or conviction is relevant to member firms, it does not have any impact on the investing public or nexus to future investor harm. Likewise, many offenses lack sufficient context and, even with a broker comment, are still interpreted in the harshest possible light.

Third, FINRA should establish a simplified process for registered representatives to seek removal of certain disclosures. Arbitration disclosures—particularly in cases where the representative is not a named respondent—are a clear example. Such disclosures are frequently the subject of expungement requests, yet representatives are forced to pursue relief through a costly and burdensome process, and only after the broker-dealer has resolved the matter (through dismissal, settlement, or award). FINRA rules require a U4 disclosure whenever a representative is a subject of a complaint, but in practice the mere mention of a representative's name in a filing will often trigger a U4 disclosure, as firms seek to avoid any potential regulatory backlash.

Fourth, when an arbitration claim is received by a member firm, it is common for FINRA to initiate a cause examination. This creates a compounded burden: firms must simultaneously respond to a dispute based on allegations that have not yet been subject to any scrutiny. Claims are frequently embellished at the outset and often contain allegations that are subsequently withdrawn as the proceeding progresses. It is punitive to treat an unverified, unadjudicated claim as sufficient cause for a regulatory audit. We understand FINRA's rationale for reviewing such claims, but we recommend that any examination be deferred until after all amended claims and answers have been filed.

Finally, we recommend that customer claimants be obligated to file and/or attach an affirmation stating that the customer (1) reviewed the statement of claim, (2) attests to the accuracy of the information within the statement of claim, and (3) understands that the claim will result in a disclosure on the registered representative's U4 and BrokerCheck Report.

Conclusion

DFPG values the opportunity to share its perspectives on these important issues. Thank you for the consideration and for FINRA's ongoing efforts to improve its rules and guidance.

Respectfully submitted on behalf of DFPG Investments, LLC,

Jason Anderson
Chief Compliance Officer