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Ms. Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1700 K Street, NW  
Washington, DC 20006-1506

**Re: Arbitration: Regulatory Notice 26-06**

Dear Ms. Mitchell:

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority (“FINRA”) on its Regulatory Notice 26-06 (“Notice”) on key areas of concern relating to FINRA’s Dispute Resolution Services arbitration forum (the “Forum”).<sup>2</sup> Fidelity supports FINRA’s objective of maintaining a neutral, efficient method for resolving disputes through the Forum. Fidelity offers the following suggestions to assist FINRA in its efforts to modernize its arbitration rules, guidance, and processes to ensure investor protection and fair outcomes for both customer and member arbitrations.<sup>3</sup>

## **1. Operational Improvements Are Needed to Enhance Arbitration Forum Efficiency**

### *a. Frivolous Claims Impede the Forum’s Mission*

Fidelity has previously advocated for amendments to FINRA arbitration rules to reduce the proliferation of frivolous litigation filed through the Forum.<sup>4</sup> Those concerns are equally

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<sup>1</sup> Fidelity is one of the world’s leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and other financial products and services. We administer approximately \$18 trillion in assets from over 50 million individual investors, 29,000 employer client firms, 16,000 wealth management firms and institutions, and 8.5 million clearing and custody accounts. <https://www.fidelity.com/about-fidelity/our-company>. Fidelity currently has six registered broker-dealers that are members of, and overseen by, FINRA (Digital Brokerage Services LLC, Fidelity Brokerage Services LLC, Fidelity Distributors Company LLC, Fidelity Prime Financing LLC, Green Pier Fintech LLC, and National Financial Services LLC).

<sup>2</sup> See Financial Industry Regulatory Authority; Arbitration, Regulatory Notice 26-06 (March 2, 2026), available at [Regulatory-Notice-26-06.pdf](#).

<sup>3</sup> Fidelity agrees with the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) in its comment letter regarding industry disputes and the recommendation to amend FINRA Rule 13200.

<sup>4</sup> See Fidelity Comment Letter responding to Financial Industry Regulatory Authority, Rule Modernization, RN 25-04 (June 11, 2025), available at <https://www.finra.org/sites/default/files/NoticeComment/Fidelity%20Comment%20Letter%20-%20FINRA%20Rule%20Modernization.pdf>.

applicable here. To further FINRA’s objective of ensuring that the Forum operates efficiently and within its intended regulatory scope, targeted rule amendments are warranted to clarify and reinforce that customer claims must arise directly from, and be inherently related to, the securities activities of the respondent member firm. Claims that fall outside this scope are not well suited for resolution in arbitration and should not be eligible for filing in the Forum.<sup>5</sup>

FINRA also should strengthen its procedures to prevent the filing of claims that are facially meritless or otherwise lacking a reasonable nexus to a member firm’s securities activities. Matters unrelated to a member’s activities as a securities firm fall outside the Forum’s jurisdiction and should be excluded at the outset by the Director pursuant to FINRA Rule 12203/13203 to preserve the Forum’s resources and integrity.

*b. Eligibility Rules are Inconsistently Followed*

Fidelity supports maintaining FINRA’s current Eligibility Rules,<sup>6</sup> which provide a clear, uniform, and predictable framework for determining the timeliness of claims. The Eligibility Rules appropriately balance investor access to the Forum with the need for finality, procedural efficiency, and fairness to all parties, even as relevant documents and information regarding a claim may become inaccessible over time. Our concern is not with the substance of the Eligibility Rules, but with their inconsistent application. More consistent adherence—particularly through enhanced and targeted arbitrator training on eligibility determinations—would strengthen confidence in the arbitration process, reduce unnecessary motion practice, and ensure the rules function as intended across cases. FINRA’s Eligibility Rules should be treated as a statute of repose, with claims barred as of a specific, objective date and not subject to equitable tolling or discovery arguments that frustrate the purpose of the Eligibility Rules. If the deadline passes, the right to arbitration should be lost (though claimants can still pursue their claims in other forums if they elect to do so).

Additional guidance is also necessary to clarify certain definitions related to FINRA’s Eligibility Rules. One important example is the meaning of the phrase “the event giving rise to the dispute,” which arbitrators often interpret inconsistently. For example, for Form U4 and U5 disclosures, the relevant “event” should be the date the information is first disclosed on the form. Nevertheless, current and former registered persons have argued that even decades-old disclosures should be eligible for arbitration because “the event giving rise to the dispute” is effectively refreshed each day the disclosure remains on FINRA’s Central Registration Depository. These claims are often asserted long after the underlying employment actions or client complaints have occurred. When arbitrators accept this flawed argument, it creates uncertainty regarding FINRA’s eligibility standards.

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<sup>5</sup> Additionally, cases seeking high-dollar amounts and/or punitive damages would be better brought in court. FINRA should consider rule amendments to remove such matters from FINRA arbitration.

<sup>6</sup> FINRA Code of Arbitration Procedure for Customer Disputes R. 12206 and Code of Arbitration Procedure for Industry Disputes R. 13206.

Conversely, the removal of disclosures from BrokerCheck merely because respondents face challenges in defending against claims due to the passage of time, aged memories, or the routine destruction of records pursuant to standard retention schedules would not benefit the investing public. Allowing such disclosures to be erased on this basis would negate the transparency and investor-protection objectives that BrokerCheck is designed to serve and would risk depriving investors of material information bearing on a registered person's history.

*c. The Forum Must Allow Motions to Dismiss*

As currently structured, the Forum's rules and guidance discourage the use of pre-hearing motions to dismiss, even where such motions would plainly promote efficiency and fairness. The current approach routinely compels both claimants and respondents to incur unnecessary expense litigating claims in the Forum that lack merit, are procedurally barred, or are no longer being actively pursued. As a result, parties are required to engage in discovery, prepare pleadings, and incur additional Forum fees, all in service of claims that should have been resolved at an early stage.

Fidelity has experienced cases where a claim is filed, but the claimant thereafter fails to meaningfully participate in the arbitration process. This might include a failure to appear at the initial pre-hearing conference, failure to respond to discovery requests, and non-responsiveness to motions filed by the respondent. It is often apparent that the claimant has effectively abandoned the claim. Nevertheless, arbitration panels frequently decline to grant pre-hearing motions to dismiss, resulting in continued proceedings despite the absence of an engaged claimant. This outcome does nothing to advance investor protection or the fair or efficient resolution of disputes. Instead, it unnecessarily consumes Forum resources and imposes unnecessary and inequitable costs on respondents.

Not only do current Forum rules regarding pre-hearing motions to dismiss inappropriately hinder the administrative process, but the rules are not consistently applied by arbitrators, and clearer guidance on when a pre-hearing motion to dismiss should be granted is needed. Encouraging panels with more guidance on the ability to grant pre-hearing motions to dismiss would benefit all parties and provide a more efficient and less costly process for all involved.

Finally, and most importantly, the Forum should encourage motions to dismiss frivolous claims. Allowing each claim to proceed is a waste of resources and does nothing for investor interests.

*d. The Use of an Industry Arbitrator Should be Required*

The use of qualified industry arbitrators has declined as they are often removed from the potential list of arbitrators by claimants, as they are viewed as "industry friendly." This blanket generalization is unfounded and incorrect. Qualified industry arbitrators provide much needed experience and support to non-industry arbitrators, especially when hearing complex claims.

The required use of a qualified industry arbitrator would accelerate the arbitration process and alleviate the current arbitrator shortage.

Moreover, the absence of an industry arbitrator has resulted in increased use of experts by claimants and respondents to help explain basic securities concepts, which in turn results in increased costs to both parties. Requiring the use of an industry arbitrator would increase efficiency and result in cost savings for both claimants and respondents.

*e. Arbitrator Recusal Requirements Should be Clarified*

As currently structured, FINRA Rule 12406 on arbitrator recusal provides only a general “good cause” standard and leaves recusal determinations entirely to the discretion of the challenged arbitrator. In practice, recusal standards are not consistently understood or applied by arbitrators, which can lead to uncertainty for parties and undermine confidence in the fairness of the process. Clearer, more detailed guidance within the Forum rules or through interpretive notices on the definition of “good cause” would promote consistent application of recusal principles, reduce motion practice, and reinforce the integrity and transparency of the Forum.

There should also be enhanced and more uniform training for arbitrators on recusal obligations—particularly regarding when disclosure issues rise to the level of mandatory recusal. Finally, arbitrators who have clear conflicts with parties should be removed from arbitrator ranking lists before they are ranked, thus eliminating the need for recusal once the arbitration begins and preventing further delay during proceedings.

*f. Claimants’ Misuse of Artificial Intelligence Unnecessarily Overwhelms the Forum and Jeopardizes Confidentiality*

With the rise of artificial intelligence, there has been a growing burden on the Forum caused by the filing of voluminous and often unnecessary motions, particularly in matters involving *pro se* claimants. In some cases, unrepresented parties leverage artificial intelligence tools to generate and file numerous motions within very short timeframes, many of which are repetitive, procedurally improper, immaterial to the merits of the dispute, or premised on misunderstandings or misrepresentations of authority, diverting limited Forum and arbitrator resources from case resolution.

The use of artificial intelligence tools has also led to the inadvertent and inappropriate public disclosure of confidential or sensitive information in motion practice. Parties should be warned against the wrongful disclosure of confidential information, which is caused by uploading, transmitting, or inputting such materials into any publicly accessible artificial intelligence platform. Clearer procedural controls, enhanced guidance for *pro se* parties, and firmer enforcement of existing rules governing motion practice would help mitigate these risks, protect confidentiality, and promote a more efficient and orderly arbitration process.

## 2. The Form U5 Expungement Process Should be Enhanced

### a. Confidentiality Requirements Are Disregarded

Despite the often sensitive nature of claims involving Form U5, claimants frequently refuse to agree to reasonable confidentiality terms or disregard them altogether once Form U5 information is produced in discovery. This conduct creates practical enforcement challenges for the Forum, exposes confidential customer, employment, and regulatory information to unnecessary public dissemination and increases motion practice and causes delays. Clearer guidance to parties, firmer enforcement of existing discovery-related confidentiality protections, and enhanced arbitrator training on the handling of sensitive Form U5 disclosure-related information would help ensure these rules are applied consistently and as intended.

### b. Defamation, not “Defamatory in Nature,” Should be Required for Expungement

Additional guidance is required to ensure the effective application of Forum rules regarding claims seeking expungement of disclosures on Form U5 that are alleged to be not defamatory, but only “defamatory in nature.” Arbitrators often rely on the concept of “defamatory in nature” when making expungement and liability assessments and apply more of a “disparagement” standard than an actual “defamation” standard. The concept of “defamatory in nature” is undefined, subjective, and not an actual legal standard. This concept should not be relied upon when assessing expungement claims. The only standard that should be used when determining whether a statement is defamatory is the legal standard governing the definition of defamation.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts that FINRA undertakes, or respond to questions FINRA may have about our comments.

Sincerely,



cc: Robert Cook, President & CEO, FINRA  
Robert Colby, Chief Legal Officer, FINRA