

Congress of the United States
Washington, DC 20510

February 9, 2022

Robert Cook
President and Chief Executive Officer
Financial Industry Regulatory Authority, Inc. (FINRA)
1735 K Street NW
Washington, DC 20006

Dear Mr. Cook:

We are writing regarding a highly disturbing report earlier this week indicating that Wells Fargo rigged the Financial Industry Regulatory Authority (FINRA) arbitration system in a case involving a customer's claim against the bank's mishandling of his investments by "improperly manipul[at]ing a list of arbitrators who could decide on the customer's claim—with the permission of" FINRA.¹

According to the findings of Superior Court Judge Belinda Edwards, "FINRA for years has used a computer system to randomly generate a neutral list of potential arbitrators from which the parties agree on three to decide the case. But in this case, multiple names were removed from the list at the request of Wells Fargo's lawyer and with the permission of Finra."² Judge Edwards wrote that, "Permitting one lawyer to secretly red line the neutral list makes the list anything but neutral, and calls into question the entire fairness of the arbitral forum."³

We have a long public record of concerns about the wide-ranging and long-lasting pattern of illegal and abusive behavior by Wells Fargo.⁴ Similarly, we have long had concerns about FINRA's ability to effectively enforce rules against fraudulent and abusive behavior by brokers and dealers.⁵ And we have for years attempted to address the

¹ Wall Street Journal, "Wells Fargo Gamed System in Investor Arbitration, Judge Says," Ben Eisen, February 3, 2022, <https://www.wsj.com/articles/wells-fargo-gamed-system-in-investor-arbitration-judge-says-11643903122>.

² *Id.*

³ *Id.*

⁴ See, e.g., Office of Senator Elizabeth Warren, "Warren Slams Wells Fargo CEO, Calls on Fed to Revoke Bank's Status as Financial Holding Company Amid Ongoing Failure to Meet Regulatory Requirements," press release, September 14, 2021, <https://www.warren.senate.gov/oversight/letters/warren-slams-wells-fargo-ceo-calls-on-fed-to-revoke-banks-status-as-financial-holding-company-amid-ongoing-failure-to-meet-regulatory-requirements>; New York Times, "Wells Fargo C.E.O. is Grilled on Capitol Hill," Emily Flitter, March 12, 2019, <https://www.nytimes.com/2019/03/12/business/wells-fargo-ceo-sloan.html>.

⁵ See, e.g., Letter from Sen. Elizabeth Warren and Sen. Tom Cotton to FINRA, May 11, 2016, <https://www.warren.senate.gov/oversight/letters/warren-and-cotton-raise-bipartisan-concerns-about-financial-adviser-misconduct-ask-finra-to-protect-investors>; House of Representatives Committee on Financial Services, Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, "Putting Investors First: Reviewing

problems for consumers and workers caused by forced arbitration processes that limit their rights.⁶ This latest report brings all three problems into focus: it reveals troubling new allegations about the atrocious behavior of Wells Fargo, the inability of FINRA to effectively police the financial system, and the unfairness of the arbitration process.

FINRA is the self-regulatory entity that oversees financial brokers and dealers in order to “protect the investing public against fraud and bad practices.”⁷ Our concerns about the effectiveness of the organization are not new: in May 2016, Sen. Warren wrote to the organization seeking to understand why “FINRA's efforts to date have not been enough to address the incidence of misconduct among financial advisers.”⁸ In March 2019, she wrote regarding concerns that FINRA was allowing brokers to scrub customer complaint records, preventing consumers from having complete and accurate information about their brokers.⁹ And in February 2021, in the wake of the Gamestop controversy, she wrote to you with a series of questions about FINRA’s ability to protect consumers caught in forced arbitration policies.¹⁰

In response to that letter, you made a series of assertions about the fairness of your arbitration system. You wrote that:

FINRA’s primary role in the arbitration process is to administer cases brought to the forum in a neutral, efficient and fair manner. In its capacity as a neutral administrator of the forum, FINRA does not have any input into the outcome of arbitrations. Investors have the option to have their case decided exclusively by public arbitrators, who have no ties to the securities industry. To provide transparency about awards rendered in the forum, FINRA makes all awards publicly available and publishes detailed arbitration statistics on its website, including the number of cases filed and their respective outcomes. FINRA recognizes the importance of providing a diverse pool of arbitrators from which parties can choose. FINRA has embarked on an aggressive campaign to recruit new arbitrators with a particular focus on adding arbitrators from diverse backgrounds [...] FINRA staff review arbitration claims and disclosures reporting

Proposals to Hold Executives Accountable,” April 3, 2019,

<https://financialservices.house.gov/events/eventsingle.aspx?EventID=402504>.

⁶ See, e.g., Letter from Sen. Elizabeth Warren to Jamie Dimon, June 27, 2019,

<https://www.warren.senate.gov/imo/media/doc/2019.06.27%20Letter%20to%20Jamie%20Dimon%20on%20forced%20arbitration.pdf>; House of Representatives Committee on Financial Services, Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, “Putting Investors First: Reviewing Proposals to Hold Executives Accountable,” April 3, 2019, <https://financialservices.house.gov/events/eventsingle.aspx?EventID=402504>.

⁷ FINRA, “About FINRA,” viewed in February 2022, <https://www.finra.org/about/what-we-do>.

⁸ Letter from Sen. Elizabeth Warren and Sen. Tom Cotton, May 11, 2016,

<https://www.warren.senate.gov/oversight/letters/warren-and-cotton-raise-bipartisan-concerns-about-financial-adviser-misconduct-ask-finra-to-protect-investors> .

⁹ Letter from Sen. Elizabeth Warren to Mr. Robert Cook, FINRA CEO, March 21, 2019,

<https://www.warren.senate.gov/imo/media/doc/2019.03.21%20Letter%20to%20FINRA%20re%20Broker%20Expu%20ngement%20Data.pdf>.

¹⁰ Letter from Sen. Elizabeth Warren to Mr. Robert Cook, FINRA CEO, February 16, 2021,

<https://www.warren.senate.gov/imo/media/doc/02.16.2021%20Letter%20from%20Senator%20Warren%20to%20Mr.%20Cook.pdf>.

arbitration awards or settlements to determine whether the issues raised in the arbitration or settlement require a further regulatory review or response.¹¹

These findings by a Federal judge in the Wells Fargo case raise serious questions about your assertions that the FINRA arbitration process is “neutral, efficient and fair,” and about whether Wells Fargo has once again sought to undermine consumer protection rules. To address these questions, we ask that you provide answers to our questions no later than February 23, 2022.

- (1) What was the specific process by which arbitrators were chosen in the Wells Fargo vs. Brian Leggett/Bryson Holdings case?
- (2) Was this process consistent with FINRA’s policies and precedents for choosing arbitrators?
- (3) Does FINRA believe that this process was conducted in “a neutral, efficient and fair manner”?
- (4) Did Wells Fargo’s attorneys communicate with FINRA officials regarding the arbitrators that would be chosen – or not chosen – to hear this case? If so, what was the nature of these communications?
- (5) Specifically, did Wells Fargo request that any arbitrators be removed from the list of those available to hear the case? If yes:
 - a. Which arbitrators did Wells Fargo request be removed?
 - b. Why did they make these requests?
 - c. How did FINRA respond to these requests?
 - d. Were the attorneys representing Mr. Leggett and Bryson Holdings given the same opportunity to strike arbitrators from this case? Did they avail themselves of this opportunity?
- (6) Does FINRA notify the public of instances where arbitrators are struck from having the ability to hear an arbitration case? If so, how does the organization do so?
- (7) Does FINRA believe the issues raised in this arbitration case “require a further regulatory review or response”?

Thank you for your attention to these matters.

Sincerely,

¹¹ Letter from Mr. Robert Cook, FINRA CEO, to Sen. Elizabeth Warren, Feb. 23, 2021, <https://www.warren.senate.gov/imo/media/doc/FINRA%20Response.pdf>.



Elizabeth Warren
United States Senator



Katie Porter
Member of Congress