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May 1, 2026

VIA EMAIL

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

Re: ***Comment on FINRA Regulatory Notice 26-06 – Modernizing FINRA Arbitration Rules, Guidance and Process***

Dear Ms. Mitchell:

I write as a plaintiff's securities arbitration attorney based in Southern California with a nationwide practice representing investors in FINRA arbitration, AAA, JAMS, and state and federal court. I am also a member of the Board of Directors of the Public Investors Advocate Bar Association (PIABA). My practice is devoted to representing investors who have suffered losses caused by broker misconduct, breach of fiduciary duty, misrepresentation, overconcentration, unauthorized trading, churning, and investment advisor fraud. Earlier in my career I worked on the defense side of these disputes, and that experience informs my view that the FINRA forum, when it functions as intended, is one of the few places where ordinary investors can obtain a meaningful remedy against the financial firms entrusted with their savings.

I appreciate the opportunity to comment on Regulatory Notice 26-06. With respect, the Notice as a whole reads less like a modernization initiative and more like an industry wish list. A great many of the proposals would tilt the FINRA arbitration forum further in favor of broker-dealers and against the investing public the forum was created to protect. I therefore urge FINRA to remain faithful to its statutory mission of investor protection, see 15 U.S.C. § 78o-3(b)(6), and to reject the bulk of the proposals discussed below. My specific comments follow the order of the Notice's requests for comment.

Forum Selection and Customer Disputes (Request for Comment A(i))

Any proposal that would let FINRA member firms route disputes out of the FINRA forum, or apply different procedural rules, based on whether a claim is labeled "complex" or "large," or whether the claimant is characterized as "institutional" rather than "retail," should be rejected.

These categories are far less stable than they appear, and in practice the very firm that benefits from the carve-out is the one positioned to engineer it.

I see this regularly in my own caseload. A retail investor is steered into a complex product or strategy on the recommendation of a broker. The same broker often suggests forming an LLC or a trust, often framed as estate planning, asset protection, or access to "elite" offerings. The investor signs the paperwork the broker hands them. Years later, when something goes wrong, the firm argues the customer is "sophisticated" or "institutional" because the account is titled in the name of an LLC the broker recommended in the first place. Forming a single-member LLC does not transform a retiree into a hedge fund. Any rule that turns on labels the firm itself helped create is an invitation to manufactured exclusions, and would create a perverse incentive for bad actors to structure their way out of accountability.

The pre-dispute versus post-dispute distinction matters and deserves emphasis. Pre-dispute waivers and forum-selection variances become boilerplate inserted into account documents the customer never reads and could not negotiate even if they did. Post-dispute, by contrast, the customer is typically represented by counsel familiar with the forum and capable of making an informed choice. Allowing the parties, or better, the customer, to make post-dispute elections poses far less risk than blessing pre-dispute industry-drafted carve-outs. The current baseline, under which a customer can compel FINRA arbitration regardless of how the firm has labeled the account, is a floor of investor protection that should not be eroded.

Eligibility and Motions to Dismiss (Request for Comment B(i))

I represent investors in long-tail product cases, non-traded REITs, TICs, private placements, GPB-type vehicles, fixed and indexed annuities, and other illiquid investments, and the proposals around eligibility and dismissal are deeply troubling from that vantage point. The harm in these cases is frequently masked for years. Sponsors set their own NAVs. Statements report values that do not exist. Distributions that look like income are in fact return of capital. By the time the investor learns the truth, the "event" the industry would like to use as a hard stopwatch is long past.

The current Rule 12206 framework, which keys eligibility to the "occurrence or event giving rise to the claim," is flexible enough to handle ongoing fraud, continuing representation, fraudulent concealment, and the delayed discovery that is the rule rather than the exception in complex product cases. It also leaves the analysis where it belongs, with the panel hearing the facts. Converting Rule 12206 into a strict statute of repose would do precisely the opposite. It would reward firms that conceal misconduct long enough to run out the clock, penalize negligent

supervision, and bar valid claims arising from ongoing schemes such as Ponzi-style frauds and serial misstatements. Many states do not apply traditional limitations periods to arbitration in any event, viewing it as an equitable proceeding, and grafting a hard repose period onto the Code would create needless inconsistency with state law without solving any real problem.

I likewise oppose expanding the timing or grounds for prehearing motions to dismiss. FINRA's existing guidance correctly disfavors merits dismissals before the close of the claimant's case-in-chief, and for good reason. In my own active matters, including a recent breach of fiduciary duty and misrepresentation arbitration involving a major wirehouse, I have seen firsthand how dispositive motions are deployed to short-circuit discovery that is essential to proving the claim. Rather than handing respondents new tools, FINRA should make explicit what experienced practitioners already know: pleading in arbitration does not require court-style particularity, and any motion practice on eligibility should follow, not precede, meaningful discovery. Otherwise, the panel rules in the dark, and the firm rules the timeline.

Arbitrator Qualifications, Classification, and Selection (Requests for Comment C & D)

FINRA arbitration exists as a substitute for the constitutional right to a jury trial. The arbitrator pool should therefore look, as nearly as practicable, like a cross-section of the public, in other words, like a jury. The recently imposed four-year college degree requirement and the five-year professional experience requirement run in the opposite direction. They disqualify, as a class, the many capable adults in this country who have never set foot in a college classroom, but who understand fairness, evidence, and human nature as well as anyone. The result is a smaller, older, more credentialed, more repeat-player arbitrator pool. That is not modernization.

It is also worth pausing on the asymmetry: under FINRA's current approach, becoming a part-time arbitrator is harder than becoming a Series 7 representative who can sell that same investor a securities product. Jurors decide capital cases without any of these prerequisites. If the goal is investor confidence, the answer is broader recruitment, including people who have themselves been customers of FINRA member firms, plus rigorous training, not narrower gates.

On classification, I oppose any dilution of the "public arbitrator" definition. The 20% professional-time threshold and the cooling-off periods are not technicalities. They are the substantive guardrails that distinguish a public arbitrator from someone whose career has been spent inside, or in service of, the industry. Practitioners who have spent years representing brokerage firms develop a defense-side worldview, I know, because I held that worldview myself for part of my career. There is nothing wrong with that perspective, but it does not belong on the public side of the panel,

and creating an "industry-lite" category would erode the legitimacy of the forum.

Rule 12403(c)(1)(A), which allows a party to strike all non-public arbitrators, was a hard-won reform that ended the era of mandatory industry presence on every panel. It should be left alone. Reverting it would undo one of the most important neutrality reforms in the modern history of the forum.

Arbitrator Training (Request for Comment E)

Procedural training is welcome. Refresher courses on hearing management, the chairperson's role, ethics, FINRA rule changes, and avoiding late withdrawals would all strengthen the forum. Training on managing complex multi-party disputes and large document productions would be especially useful given the volume of ESI in modern cases.

Substantive training is a different matter. I oppose any FINRA-curated training that would teach arbitrators how to evaluate categories of products, theories of liability, or elements of state-law claims. That is the work of advocates and expert witnesses, presented in the record before the panel. Once FINRA itself begins instructing arbitrators on substance, FINRA has put a thumb on the scale, even if unintentionally. I likewise oppose training that ranks the importance of customer claims by size or sophistication. The retiree with a six-figure IRA and the family office with a nine-figure portfolio are entitled to the same neutrality and the same dignity in this forum.

Discovery (Request for Comment F)

Discovery is where the imbalance between the industry and the investor is felt most acutely, and the Discovery Guide as currently administered does not reflect the realities of practice in 2026. The Guide was a real improvement over the prior "adjudication by ambush" era, but it is now routinely used as a shield rather than a roadmap. Boilerplate objections to presumptively discoverable items, exception reports, commission runs, supervisory communications, are filed reflexively, often dressed up with inapt invocations of Gramm-Leach-Bliley. The remedy is not a new layer of process. It is enforcement of the rules already on the books.

I urge FINRA to clarify, in the Guide and through arbitrator training, that boilerplate objections to presumptively discoverable items are sanctionable. The Guide should also be updated to confirm what experienced practitioners already understand to be discoverable: full compliance manuals (not selectively excerpted screenshots), regulatory investigation materials including FINRA Rule 8210 requests and SEC Wells notices, and the universe of relevant communications, emails,

internal chat platforms, and text messages, concerning the customer, the products at issue, and the strategy at issue. These are the documents that tell the truth of what the firm knew and when.

I do not support creating a new "discovery referee" or any additional administrative tier. The Code of Arbitration Procedure already devotes eight rules to discovery. The problem is not a vacuum of rules; it is uneven enforcement and a reluctance among some panels to impose meaningful consequences on repeat offenders. A new role would add cost and delay, and depending on staffing, risks introducing the very industry tilt the forum is supposed to avoid.

Further limitations on discovery should be rejected. Access to relevant information is a right, not a courtesy extended at the firm's convenience. Broker-dealers are required by SEC books-and-records rules to maintain their data in a readily accessible form, and an objection grounded in burden should be required to make a concrete showing rather than a generic recital.

One specific addition is overdue: the Discovery Guide should require, on request, the production of insurance coverage information, including policy declarations, the full policy, and any declination or reservation-of-rights letters. Mandatory disclosure of liability insurance is the rule in federal court and in nearly every state court system. Withholding it in FINRA arbitration disadvantages the customer in evaluating settlement, assessing collectability, and critically, making informed decisions about an industry that has a documented unpaid-award problem.

Hearing Oversight and Efficiency (Request for Comment G)

FINRA should not establish a central staff-level resource that arbitrators may consult for interpretive guidance. That blurs the line between the administrator of the forum and the adjudicator within it. Better resources, clearer existing materials, and stronger procedural training accomplish the legitimate goal without compromising arbitrator independence.

New case management requirements are not necessary. What is needed is consistent enforcement of the deadlines and obligations already in the Code. When a firm fails to meet its discovery obligations, the answer is not a new rule but a panel willing to impose consequences and an institution willing to support that. A modest improvement that would help: when procedural milestones such as the Initial Prehearing Conference or the final hearing date slip, FINRA staff should automatically check in with the parties and the panel to offer administrative assistance, rather than waiting for one side to ask. This relieves counsel and parties of the tactical pressure of being the first to flag a problem.

On the technology side, practical improvements would meaningfully help practitioners and parties: a mobile-friendly DR Portal interface, prompt and predictable invoicing, more granular filing categories for common motions, and a docket display that approaches the clarity of PACER, including the ability to filter and search the docket. These are operational fixes that benefit everyone using the forum.

Punitive Damages (Request for Comment H)

The arbitrators' authority to award punitive damages must be preserved. Punitive damages are awarded in well under 1% of cases, and when they are awarded, it is in response to conduct the panel found egregious enough to warrant punishment and deterrence. The industry's push to limit them is a reaction to a small handful of high-profile awards in which the panel plainly concluded the conduct demanded that response. Stripping arbitrators of that authority would shield the worst actors from the most meaningful consequences, the precise opposite of what an investor-protection mandate requires.

FINRA should also refuse to permit pre-dispute agreements that limit or preclude punitive damages. A boilerplate waiver inserted into account-opening paperwork is not a negotiated allocation of risk; it is a Hobson's choice presented to a customer who has no ability to negotiate it. Honoring such waivers would create a direct incentive for misconduct by firms confident the worst they will face is a refund.

No FINRA-specific cap on punitive damages should be imposed. State and federal law already provide both the standards for awarding punitive damages and the constitutional ceilings on their amount. Layering FINRA-specific caps on top of that framework is redundant and would invite disputes about which regime governs.

Additional procedural hurdles, bifurcated hearings, mandatory explained decisions limited to punitive awards, special qualifications for arbitrators considering punitive damages, should likewise be rejected. They add cost and delay and discourage panels from awarding rare and warranted relief, while adding nothing the existing legal framework does not already supply. There is something genuinely incongruous about the suggestion that the same arbitrators trusted to dismiss an investor's entire case, or to enter an award against the customer, are not trusted to evaluate punitive damages against the firm.

I also strongly oppose a punitive-damages-specific appellate track. The Federal Arbitration Act and parallel state statutes already provide vacatur remedies for corruption, fraud, evident partiality,

and arbitrator misconduct. A bespoke appeal mechanism aimed at punitive awards would single out adverse-to-industry outcomes for additional review and, in doing so, would undermine the finality that is one of arbitration's core promises.

Arbitration Awards Online (Request for Comment J)

The AAO database is one of the most important transparency tools in the FINRA forum. Counsel on both sides use it. So do regulators, journalists, academics, and importantly, prospective claimants trying to understand whether their broker has a pattern. Stripping awards from AAO, or permitting selective redaction, would create an information advantage for the repeat-player firms and a corresponding blind spot for the one-shot investor.

FINRA should not amend its rules to permit removal or redaction of awards from AAO. The expungement framework is already too permissive, with high grant rates and structural under-opposition; allowing awards themselves to disappear would compound that problem. Awards should remain public in their entirety.

The better path is to invest in AAO. Convert awards into structured, searchable data; integrate outcome analytics; cross-link awards with court filings and BrokerCheck records; and improve full-text search. These enhancements would benefit every constituency that uses the database, including FINRA itself.

Unpaid Awards (Request for Comment K)

The unpaid award problem is a structural failing that FINRA has acknowledged for decades and not meaningfully solved. As of 2024, roughly 25% of investor awards remain unpaid, and approximately 37 cents on every awarded dollar is uncollected. Those are not the numbers of a healthy enforcement regime; they are the numbers of a system that lets bad actors walk away from their accountability.

The most effective response is a national investor recovery pool, administered by FINRA and funded by member firm assessments. The objection that this is unaffordable does not survive even cursory examination: in the last ten months alone, FINRA has separately refunded $50 million and $100 million to its member firms. The resources exist; the question is one of priorities. State-level insurance mandates, Oregon's being the most-studied example, demonstrate that requiring coverage does not reduce investors' access to advisory services. FINRA should also support legislative changes that prevent the discharge of unpaid arbitration awards in bankruptcy and that

strengthen disclosure of unpaid awards on BrokerCheck and elsewhere.

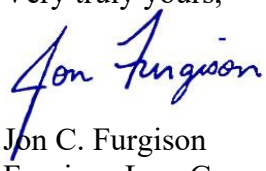
The moral hazard objection is unpersuasive. Intentional misconduct is excluded from virtually all liability coverage, and any properly designed recovery pool would retain rights of subrogation against the wrongdoer. Bad actors do not commit fraud because of a backstop they cannot personally claim. The unpaid award problem must be addressed regardless of forum or job title, customers do not care whether the person who took their money was a broker, an investment advisor, or both, and neither should the remedy.

Conclusion

I urge FINRA to evaluate every proposal in Regulatory Notice 26-06 against the single standard set by Section 15A(b)(6) of the Exchange Act: whether the proposal is designed, in general, to protect investors and the public interest. Measured against that standard, most of the changes contemplated by the Notice fall short. Modernization of the FINRA forum is welcome and necessary; tilting the forum further toward the firms that fund it is not. The principles of fairness, transparency, and the customer's best interest are the bedrock of this forum's legitimacy. Those principles must be preserved, and where they have eroded, restored.

I appreciate the Staff's consideration of these comments and welcome the opportunity to discuss them further.

Very truly yours,



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