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April 22, 2026

VIA EMAIL
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K. Street, NW
Washington, DC 20006
E-mail: pubcom@finra.org

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

Dear Ms. Mitchell,

My name is Adam Gana and I am the immediate past president of the Public Investor Advocate Bar Association (PIABA). I represent investors in FINRA Arbitrations across the country and have represented over 3,000 investors over the last 20 years in the forum. I am an adjunct professor Chicago-Kent College of Law – Illinois Institute of Technology and New York Law School. I have written extensively on issues related to investors, FINRA and the changes discussed in this Notice. I write on behalf of myself and my law firm Gana Weinstein, LLP.

FINRA's arbitration forum is not optional for most investors. It is imposed. That reality should drive every decision FINRA makes. Against that backdrop, most of the proposals in Regulatory Notice 26-06 move in the wrong direction. They increase procedural barriers, expand tools for dismissal, and tilt the process toward the repeat players who already have structural advantages.

Forum Selection/Customer Disputes (Requests for Comment A(i))

Any proposal that allows firms to steer cases into alternative forums based on labels like "complex," "large," or "institutional" is fundamentally flawed. Those labels are often manufactured by the firm. Retail investors are routinely placed into complex products, private placements, and structures like LLCs or trusts at the recommendation of their advisor. That does not make them sophisticated. It does not justify stripping them of protections. Pre-dispute forum selection always benefits the firm. It will be embedded in boilerplate agreements and never negotiated. Post-dispute flexibility is different. At that point, the investor is represented and can make an informed decision. If FINRA allows firms to route claims away from its forum, it will not increase fairness. It will simply move cases to venues with fewer protections and greater imbalance. If FINRA considers any change to the forum selection, it should consider giving

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Claimants exclusive choice as to whether it wants to participate in arbitration and if so, which forum to use. Investor choice is more equitable than industry choice and more in line with FINRA's state mission of investor protection.

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

Regarding arbitrator qualification, requiring a college degree and "professional experience" to serve as an arbitrator was a mistake. FINRA has now excluded a significant portion of the population from serving in the forum. That makes the pool less representative, not more qualified. This forum is supposed to function as a substitute for a jury. Juries do not require degrees. Judges are not selected based on industry experience. In practice, this limitation increases reliance on repeat arbitrators and professional decision-makers who look more like the respondents than the claimants. That is not progress. FINRA should be expanding the pool, not narrowing it. Investors deserve a diverse pool of potential arbitrators, not a homogenous group of like-minded industry representatives. On classification, the current guardrails for "public arbitrators" should remain.

On arbitrator classification, there is no justification for treating attorneys who represent investors as "non-public." Investor attorneys are adverse to the industry, not aligned with it. That classification should be corrected.

On arbitrator selection, the ability for customers to strike all non-public arbitrators was a necessary reform and should not be revisited. FINRA should not reinstitute a required non-public arbitrator on panels. Statistically Claimants fare better in cases without a non-public arbitrator. Taking away an investor's ability to strike all non-public arbitrators is antithetical to investor protection.

Finally, in terms of multiparty arbitrator selection, if separately represented claimants cannot have separate ranks and strikes, separately represented respondents should have to similarly share one ranking. Parity is important.

Arbitrator Training (Requests for Comment E)

Additional procedural training is appropriate. Training on ethics, case management, and FINRA rules is helpful. Training on substance is not necessary and could cause bias. FINRA should not be teaching arbitrators how to think about specific claims or products. That is the role of the parties and their experts. Anything beyond procedure risks putting a thumb on the scale. Substantive issues should be left to argument by the parties' advocates and testimony of expert witnesses.

Discovery (Requests for Comment F)

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Despite the existence of presumptively discoverable lists, broker-dealers routinely evade production through boilerplate objections, delay tactics, and improper reliance on statutes like the Gramm-Leach-Bliley Act. This results in unnecessary motion practice and undermines the purpose of arbitration as an efficient forum. FINRA should make clear that objections to presumptively discoverable materials are sanctionable absent a specific and demonstrated burden.

At the same time, the Discovery Guide must be updated to reflect how the securities industry actually operates today. Discovery is now almost entirely electronic. Communications occur through text messages, messaging applications, and informal channels that are often highly probative. The Guide should expressly require production of all forms of electronic communication, including texts and messaging apps, not just emails.

In addition, FINRA should expand required production to include:

- complete compliance, supervision, and Reg BI manuals without delay or segmentation;
- regulatory materials, including FINRA Rule 8210 requests, SEC Wells notices, and related responses;
- due diligence and product approval materials in all product cases; and
- both statements of claim and corresponding answers in similar prior cases to provide a complete record.

FINRA should also require the production of insurance coverage, including policy declarations, full policies, and any reservation of rights or declination letters. This information is routinely disclosed in litigation and is critical to evaluating settlement and collectability. Its absence in arbitration is unjustified and contributes to inefficiency and unpaid awards.

Finally, FINRA should address structural sources of delay. Confidentiality disputes routinely stall discovery. Arbitrators should be required to address confidentiality agreements at the outset of the case to avoid predictable delays. Similarly, firms should be required to identify relevant supervisors early so that discovery can be targeted and efficient.

FINRA does not need new layers such as discovery referees. It needs to enforce the rules it already has, update the Guide to reflect modern communications and product cases, and impose real consequences for non-compliance.

Hearing Oversight and Efficiency (Requests for Comment G)

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FINRA should not insert itself into live cases through "real-time oversight." That blurs the line between administrator and adjudicator. Arbitrators run the case. That is the system. If there are delays, FINRA can check in administratively, but it should not influence proceedings. Fix the portal, improve usability, and make filings clearer. That will do more for efficiency than any new oversight structure.

Punitive Damages (Requests for Comment H)

Punitive damages are awarded rarely and probably less frequently than is fair. The industry's focus on this issue is not about fairness. It is about limiting exposure.

There should be no caps on punitive damages, no special proceedings, no additional qualification, no appeals or carve-outs. Arbitrators are already trained to view punitive damages as a rare occurrence to punish wrongdoing. It makes no sense to suggest they cannot handle punitive damages.

Arbitration Awards Online (AAO) (Requests for Comment J)

Awards should not be removed or hidden. The current expungement process already favors the industry. Reducing access to awards would only make the information imbalance worse. Transparency is essential. FINRA should improve the system by making the awards easier to search with structured data and links to court actions.

Unpaid Awards (Requests for Comment K)

For decades, the unpaid-award problem has been identified, studied, and discussed. The problem is no longer a lack of diagnosis. It is a lack of action. FINRA must require brokerage firms to have and maintain insurance. As Ben Edwards and I explained in *The Insurance Solution for Financial Advice Failures* Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4999791), insurance requirements would both protect investors and allow market forces to discipline misconduct.

FINRA should stop treating unpaid awards as an unavoidable byproduct of arbitration. They are a structural failure. A dispute resolution forum cannot credibly claim to protect investors if a substantial share of prevailing claimants never collect. Insurance is the most practical and immediate solution because it addresses the core problem: many firms and advisers are undercapitalized relative to the harm they can cause. Requiring meaningful errors and omissions coverage would improve collectability, shift some risk away from retirees and retail investors, and force insurers to price misconduct and weak compliance into the market. That is not theoretical. It is one of the central conclusions of the article.

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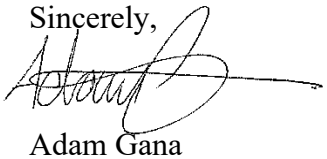
The usual objection is that insurance mandates will reduce access to financial advice by driving advisers out of the market. The available evidence does not support that claim. The article points to Oregon and Oklahoma as real-world examples where insurance mandates did not reduce access to advisory services, and Oregon publicly requires proof of at least $1 million in errors and omissions coverage for Oregon-based state investment advisers. That matters here. FINRA does not need to speculate. Insurance mandates are feasible, already in use, and capable of reducing one of the most damaging failures in the current system.

At a minimum, FINRA should require member firms and associated persons engaged in customer-facing advisory or sales activity to maintain adequate insurance coverage, disclose that coverage to customers, and pair that requirement with stronger capital and collectability protections. If FINRA is serious about investor protection, unpaid awards cannot remain a known and tolerated feature of the forum. The forum is only as legitimate as its ability to turn awards into actual recovery.

CONCLUSION

FINRA's mandate is investor protection. Several of the proposals in this Notice undermine that mandate by increasing barriers to recovery and expanding tools that the industry. Many of these anti-investor proposals should be rejected. FINRA should focus on enforcing existing rules, maintaining a fair forum, and ensuring that investors are afforded a fair and diverse arbitrator pool that result in awards from firm that are collectable and fair for investors.

Sincerely,



Adam Gana