

Dontay Phillips, Esq.

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

Re: Comment on Regulatory Notice 26-06 | Modernizing FINRA Arbitration Rules, Guidance and Processes¹

Dear Ms. Mitchell:

In 2015, a FINRA arbitration panel awarded Bruce Wilkerson, an offensive tackle who had reached the Super Bowl with the Green Bay Packers before retiring to work as a machinist, over \$600,000 in compensatory damages and an additional \$1.4 million under the Tennessee Consumer Protection Act against Resource Horizons Group, a brokerage firm whose registered representative had run a Ponzi scheme against him.² Mr. Wilkerson never collected a dollar. Resource Horizons Group closed its doors without errors-and-omissions insurance sufficient to cover his claim, and the investor who had placed his trust in a FINRA-member firm, prevailed on the merits before a FINRA arbitration panel, and was still left empty-handed.

Mr. Wilkerson's experience is not an isolated incident and, in fact, represents a much broader trend. Specifically, the crisis of unpaid customer arbitration awards is among the most durable structural failures in United States securities regulation. The Government Accountability Office reported in 2000 that approximately 61% of 1998 customer arbitration winners either were not

¹This comment responds to Regulatory Notice 26-06 (March 2, 2026), in which FINRA requests comment on modernizing its arbitration rules, guidance, and processes. This comment addresses, specifically, Question F.4; whether FINRA should amend Document Production List 1 to require respondents to produce, on a confidential basis during discovery, documents concerning the existence and extent of any insurance coverage, and Questions K.1 through K.3, concerning approaches to enhancing resources available to pay customer arbitration awards. The comment proceeds on the view that the answer to each of those questions should be affirmative, and offers five refinements to the disclosure framework contemplated by Question F.4.

²*Wilkerson v. Resource Horizons Group, LLC*, FINRA Case No. 14-00904 (Award dated Mar. 11, 2015), available at https://www.finra.org/sites/default/files/ao_documents/14-00904-Award-All%20Public%20Panel-20150311.pdf; Mason Braswell, *Ex-NFL Player Left Out in the Cold After \$2 Million Award*, Investment News (June 22, 2015); Melanie Waddell, *Savings of Ex-NFL Player Left Gutted by Unpaid FINRA Arb Award*, ThinkAdvisor (Mar. 7, 2018).

paid at all or received only partial payment.³ More than a decade and a half later, FINRA itself acknowledged that approximately \$199 million of the \$710 million in customer awards issued between 2012 and 2016 went uncollected—roughly twenty-eight cents of every dollar awarded.⁴ PIABA’s 2021 update confirmed that the ratio has persisted rather than diminished.⁵ The Senate Appropriations Committee recently concluded, in unambiguous language, that “FINRA has failed to undertake steps to address unpaid arbitration awards by its members.”⁶

I write in response to Regulatory Notice 26-06, specifically to urge FINRA to answer Question F.4 affirmatively by requiring mandatory disclosure of respondent insurance coverage in customer arbitration, and to pair that disclosure requirement with the structural reforms contemplated by Questions K.1 through K.3. I submit this comment as a licensed attorney, FINRA arbitrator, and a former FINRA legal intern whose published work for the organization addressed the practical challenges faced by *pro se* parties in the arbitration forum. My perspective also reflects prior compliance experience at Goldman Sachs and Wells Fargo, where the interaction between regulatory disclosure and operational risk management is a daily concern.⁷

This comment proceeds in three parts. Part I contextualizes the unpaid awards problem as structural rather than cyclical and demonstrates that existing reforms, while directionally correct,

³U.S. Gov’t Accountability Office, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards*, GGD-00-115, at 33 (2000) (finding that approximately 61% of 1998 customer arbitration winners either were not paid or received only partial payment) [hereinafter *GAO 2000*].

⁴FINRA, *Discussion Paper, FINRA Perspectives on Customer Recovery*, at 3-4 (Feb. 2018), available at <https://www.finra.org/rules-guidance/key-topics/customer-recovery> [hereinafter *FINRA 2018 Discussion Paper*] (reporting that approximately \$199 million of the \$710 million in customer awards issued from 2012-2016 went unpaid, or roughly 28% of award dollars).

⁵Hugh Berkson & David P. Meyer, *FINRA Arbitration’s Persistent Unpaid Award Problem*, Public Investors Advocate Bar Ass’n (Sept. 2021), available at <https://piaba.org/piaba-newsroom/piaba-report-finra-arbitrations-persistent-unpaid-award-problem-september-29-2021> (documenting the continuing incidence of unpaid customer arbitration awards notwithstanding intervening reforms).

⁶S. Rep. No. 118-206, at 103 (2024) (Senate Appropriations Committee finding that “FINRA has failed to undertake steps to address unpaid arbitration awards by its members” and directing the SEC to “continue to engage with FINRA to identify ways to reduce and eliminate the occurrence of unpaid awards”).

⁷ I submit this comment in an individual capacity. The views expressed herein do not represent the views of any employer, client, or organization with which I am currently or have been affiliated, including the Financial Industry Regulatory Authority, for which I previously served as a legal intern.

have not materially altered the default rate. Part II argues that mandatory insurance disclosure addresses the problem at two distinct stages of the arbitration life cycle, settlement and pre-award, and that the federal civil-procedure analogue, together with the natural experiments conducted in Oregon, Oklahoma, Kansas, and at Charles Schwab, furnishes compelling empirical support for the proposal. Part III offers five refinements, drawing on the scholarly literature and sister-regulator practice, to strengthen the proposal and align it with analogous regimes.

I. THE UNPAID AWARDS PROBLEM IS STRUCTURAL, NOT CYCLICAL

An accurate answer to Questions F.4 and K.1 through K.3 of Regulatory Notice 26-06 must begin with the recognition that the unpaid awards problem is structural in character. FINRA’s own 2018 Discussion Paper concluded that a disproportionate share of unpaid award dollars is attributable to a small number of firms, many of which exit the industry shortly after the award issues—by voluntary withdrawal, expulsion, or dissolution.⁸ That pattern is produced by a regulatory architecture that permits broker-dealers to operate with net capital reserves calibrated to ongoing operations rather than to the tail risk of customer-arbitration liability, and that does not require them to carry errors-and-omissions coverage against that liability.⁹

Academic scholarship has traced the pattern with precision. Professors Honigsberg, Hu, and Jackson have documented the phenomenon of “cockroaching,” financial advisers who exit federal oversight after committing serious misconduct and continue to advise investors through insurance-product channels subject to lighter regulatory scrutiny.¹⁰ Professor Benjamin Edwards has separately shown how self-regulatory incentives permit undercapitalized firms to remain active until customer claims accumulate, at which point exit becomes rational for the firm and calamitous for the investor.¹¹ The North American Securities Administrators Association’s 2019 survey of

⁸FINRA 2018 Discussion Paper, *supra* note 4, at 4 (noting that a disproportionate share of unpaid awards is attributable to a small number of firms, many of which exit the industry shortly after the award).

⁹17 C.F.R. § 240.15c3-1 (net capital rule); FINRA Rule 4111 (authorizing FINRA to impose additional obligations on broker-dealers with significantly higher levels of risk-related disclosures than similarly sized peers, based on numeric threshold criteria).

¹⁰Colleen Honigsberg, Edwin Hu & Robert J. Jackson, Jr., *Regulatory Arbitrage and the Persistence of Financial Misconduct*, 74 Stan. L. Rev. 737, 742 (2022) (documenting the movement of financial advisers who exit federal oversight after serious misconduct and continue to advise investors, commonly referred to as “cockroaching”).

¹¹Benjamin P. Edwards, *The Dark Side of Self-Regulation*, 85 U. Cin. L. Rev. 573 (2017); Benjamin P. Edwards, *Supreme Risk*, 74 Fla. L. Rev. 543, 556-60 (2022).

broker-dealer errors-and-omissions coverage confirms that a significant share of the industry operates without any such coverage at all.¹²

Against this backdrop, incremental reforms to the Code of Arbitration Procedure have been salutary but insufficient. The reforms have not meaningfully disturbed the ratio of unpaid award dollars to total award dollars. The persistence of that figure across more than two decades of regulatory attention, from the GAO's 2000 report to FINRA's 2018 Discussion Paper to PIABA's 2021 update, supports the inference that information-forcing reforms, which equip claimants, arbitrators, and the market with better data at the moment decisions are made, are likely to outperform reforms that operate only after an unpaid award has been rendered.

FINRA has itself canvassed the available structural remedies: (i) mandatory professional liability or errors-and-omissions insurance; (ii) a customer recovery pool funded by member assessments; (iii) heightened net capital requirements; and (iv) enhanced disclosure.¹³ The first three are substantial regulatory undertakings that properly demand extended deliberation and rulemaking. The fourth or enhanced disclosure of existing insurance coverage, by contrast, is administratively modest and can be accomplished within FINRA's existing rule-making authority without disturbing the net capital framework or creating novel fund obligations.

Publicly, we've seen that the Public Investors Advocate Bar Association (PIABA) has, in its most recent comment correspondence, urged FINRA to proceed on parallel tracks—requiring member firms to carry appropriate liability coverage and simultaneously requiring confidential discovery-stage disclosure of such coverage, with the information to remain inadmissible at the merits

¹²North American Securities Administrators Ass'n, *E&O Insurance Survey Report*, at 2 (Dec. 2019), available at <https://www.nasaa.org/wp-content/uploads/2019/12/2019-BD-EO-Survey-Report-Formatted-FINAL.pdf> (documenting that significant numbers of broker-dealers operate without errors-and-omissions coverage).

¹³*FINRA 2018 Discussion Paper*, *supra* note 4, at 7-9 (canvassing, *inter alia*, mandatory insurance, a recovery pool funded by member assessments, increased net capital requirements, and enhanced disclosure as partial mechanisms).

hearing.¹⁴ The confidentiality-plus-inadmissibility architecture mirrors the approach FINRA itself proposed, then puzzlingly abandoned, in 2018.¹⁵

II. INSURANCE DISCLOSURE OPERATES AT TWO STAGES OF THE ARBITRATION LIFE CYCLE

A. *At the Settlement Stage: Correcting Information Asymmetry*

FINRA has itself placed insurance disclosure squarely before commenters: Regulatory Notice 26-06 acknowledges that “respondents in customer arbitrations be required to disclose, in confidence during discovery... the existence and extent of any insurance coverage” is a live proposal in the current record, and Questions F.4 and K.1 through K.3 invite precisely the analysis that follows.

The overwhelming majority of customer arbitration claims resolve by settlement or withdrawal rather than by award.¹⁶ The quality of those settlements, whether they reflect the merits of the underlying dispute or merely the superior information position of one party, is therefore of central, not peripheral, importance to the efficacy of the forum.

Classical settlement theory, from Posner through Priest and Klein, models settlement outcomes as a function of the parties’ respective information sets and their estimates of the trial or award value of the claim.¹⁷ Where one party possesses materially more information about the defendant’s ability to pay than the other, settlements systematically deviate from the merits-based equilibrium. This is precisely the situation of the customer claimant facing a broker-dealer respondent in

¹⁴Letter from Public Investors Advocate Bar Ass’n to Jennifer Piorko Mitchell, Office of the Corporate Sec’y, FINRA, Re: Comment Letter Regarding FINRA Regulatory Notice 25-07, at 7-8 (July 14, 2025) [hereinafter *PIABA Comment on RN 25-07*] (urging FINRA to “require all member firms to maintain appropriate liability insurance” and to require disclosure of insurance information on a confidential basis during discovery).

¹⁵FINRA, *Regulatory Notice 18-22, FINRA Requests Comment on Proposed Amendments to the Discovery Guide for Customer Arbitration Proceedings* (May 2018), available at <https://www.finra.org/rules-guidance/notices/18-22>. The 2018 proposal would have made respondent insurance information presumptively discoverable on a confidential basis, with such information presumptively inadmissible at the merits hearing absent extraordinary circumstances.

¹⁶FINRA, *Dispute Resolution Statistics* (reporting that the substantial majority of customer claims resolve by settlement or withdrawal rather than by award), available at <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics>.

¹⁷Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. Legal Stud. 399, 417-19 (1973); George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. Legal Stud. 1 (1984).

FINRA arbitration; the respondent knows whether it carries errors-and-omissions coverage, at what limits, and subject to what exclusions, while the claimant, absent disclosure, does not.

The consequence is predictable. A claimant uncertain whether any recovery will be collectible faces strong pressure to accept discounted settlement offers, because a certain present payment dominates a speculative future award. Conversely, a claimant with reliable information that the respondent is covered by adequate insurance can negotiate from a posture that more accurately reflects the merits of the underlying claim. Professor Tom Baker's work on liability insurance as *de facto* settlement regulation demonstrates that policy limits, where disclosed, operate as predictable ceilings around which the overwhelming majority of insured tort matters resolve.¹⁸ There is no principled reason to exclude the securities-arbitration context from that well-documented pattern, making the adoption of the proposed disclosure requirements a critical step in modernizing the forum's settlement dynamics.

The federal civil-procedure analogue is instructive as a matter of policy. Federal Rule of Civil Procedure 26(a)(1)(A)(iv) has required, since 1993, that parties produce insurance agreements as part of mandatory initial disclosures, "without awaiting a discovery request."¹⁹ The advisory committee note explained the objective with unusual clarity, elucidating that insurance disclosure "will enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation."²⁰ That rationale applies with equal or greater force in a forum designed to be faster, cheaper, and more accessible to unrepresented retail investors than Article III litigation. A number of states have adopted analogous disclosure regimes for ordinary civil actions and first-party insurance claims.²¹ Thus,

¹⁸Tom Baker, *Liability Insurance as Tort Regulation: Six Ways That Liability Insurance Shapes Tort Law in Action*, 12 Conn. Ins. L.J. 1, 6-8 (2005).

¹⁹Fed. R. Civ. P. 26(a)(1)(A)(iv) (requiring, as part of mandatory initial disclosures and without awaiting a discovery request, "any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment").

²⁰Fed. R. Civ. P. 26 advisory committee's note to 1970 amendment (explaining that insurance disclosure "will enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation").

²¹Fla. Stat. § 627.4137 (requiring insurers, upon written request by a claimant, to disclose policy limits and insured identities); Cal. Civ. Proc. Code § 2017.210 (providing for discovery of insurance agreements); 215 Ill. Comp. Stat. 5/143.24b.

FINRA’s arbitration forum, whose discovery guide contains no categorical presumption of insurance disclosure,²² is the outlier rather than the norm.

FINRA has itself acknowledged the force of this criticism. In 2018, FINRA issued Regulatory Notice 18-22, which solicited comment on precisely the framework this proposal would institute, presumptive discoverability of respondent insurance coverage on a confidential basis, with such information inadmissible at the merits hearing absent extraordinary circumstances.²³ However, as stated earlier, for reasons that have never been fully explained, FINRA declined to move forward with the 18-22 proposal.²⁴ Question F.4 of Regulatory Notice 26-06 represents, in significant measure, an overdue return to that abandoned architecture, and the intervening years have not diminished but rather reinforced the affirmative case supporting it.

B. At the Pre-Award Stage: Surfacing Collectability Risk Early

Insurance disclosure serves a second function distinct from settlement facilitation. Required disclosure operates as a diagnostic signal about the respondent’s capacity to satisfy any eventual award, and it does so at the moment such information is most useful, before the parties and the forum have invested the resources required to adjudicate the merits.

Consider the counterfactual of the Mr. Wilkerson’s case presented earlier. Under a Rule 26-type disclosure regime, Resource Horizons Group’s absence of adequate coverage would have surfaced in the earliest stages of the proceeding. Mr. Wilkerson and his counsel could have made an informed decision whether to press forward, to adjust settlement strategy, or to pursue alternative avenues of recovery before expending the resources required to litigate a multi-million-dollar claim against a respondent already headed for the exits. Every downstream actor—claimant, respondent, arbitrator panel, and FINRA itself—would have acquired material information that today is held asymmetrically or not at all.

²²FINRA, *Discovery Guide* (2013), available at <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf> (cataloguing presumptively discoverable documents in customer arbitrations without a categorical requirement that respondents produce insurance-coverage information).

²³Gana & Edwards, *supra* note 7, at 9 (observing that FINRA “chose not to move forward with the rule” for “reasons that remain unclear,” with the result that “many investors now proceed with claims against uninsured brokerages incapable of paying damages”).

For FINRA as regulator, aggregated disclosure data, particularly disclosure of the *absence* of coverage, supplies an empirical signal that complements existing reporting streams under Rules 4530 and 4524 and the BrokerCheck disclosure regime.²⁵ Firms operating with neither adequate capital nor liability insurance would be visible, in the aggregate, at a point earlier than the current framework permits. This signaling function would also supply evidentiary substrate for the calibrated sanctions available under FINRA’s Rule 4111 “Restricted Firm” framework, which already contemplates heightened obligations for broker-dealers with elevated risk-related disclosures.²⁶

By integrating insurance data into the existing risk-monitoring framework, FINRA could significantly enhance its ability to identify ‘restricted firms’ before they collapse. However, to realize these gains, the regulator must first move past the industry’s primary defensive shield, the unproven assertion that disclosure requirements would fundamentally constrict the availability of financial advice.

C. The Natural Experiments Vitiating the “Access to Advice” Objection

Industry opposition to insurance-related reforms has long rested on the contention that any such requirement would restrict the availability of financial advice, particularly for main-street investors. However, these speculative harms vanish when held up against the light of real-world regulatory application.

Oregon in 2018 and Oklahoma in 2020 each instituted errors-and-omissions insurance requirements of at least \$1 million for state-registered investment advisers.²⁷ Kansas, since 2012, has required registered advisers to disclose their professional liability insurance status to current

²⁵FINRA Rule 4530 (reporting of specified events, including customer complaints and awards); FINRA Rule 4524 (supplemental FOCUS information); FINRA Rule 8210 (authority to require information); FINRA, *BrokerCheck*, available at <https://brokercheck.finra.org>.

²⁶FINRA Rule 4111 (“Restricted Firm” framework permitting FINRA to impose additional obligations on broker-dealers with significantly higher levels of risk-related disclosures based on numeric, threshold-based criteria).

²⁷Or. Rev. Stat. § 59.175 (2018) (requiring state-registered investment advisers to maintain at least \$1 million in errors-and-omissions insurance); Or. Admin. R. 441-175-0185; Okla. Admin. Code § 660:11-7-11 (2020) (imposing analogous \$1 million requirement); *In re Waiver of Certain Requirements Under K.A.R. 81-14-9 and New Requirement Authorized By K.A.R. 81-14-10 for Disclosure Regarding Insurance Coverage*, 2012 WL 5473856 (Nov. 7, 2012) (Kansas disclosure requirement).

and prospective clients.²⁸ In 2021, Charles Schwab & Co., a market-leading custodial platform, began requiring all Registered Investment Advisers using its platform to carry at least \$1 million in coverage.²⁹ Each of these initiatives constitutes a natural experiment whose results can now be studied.

The most comprehensive such study, conducted by Chuan Qin and Craig McCann of SLCG Economic Consulting in 2024, compared the number of investment advisers in Oregon and Oklahoma before and after implementation of the insurance mandates against controls in non-mandate jurisdictions. The study concluded that the insurance requirements “had no material effect on the number of financial advisers in either state.”³⁰ The number of advisers, in fact, increased in both states post-mandate. Schwab’s public disclosures confirm that its RIA client base continued to grow after its insurance mandate took effect, even through a historically difficult year for financial markets.³¹

The upshot is that the empirical case against insurance-related reforms has collapsed under the weight of the data that sister regulators and private custodians have generated. If a \$1 million substantive mandate does not constrict access to advice, *a fortiori* a disclosure obligation, which requires only that existing coverage be reported, and which imposes no substantive coverage requirement at all, cannot plausibly be said to do so.

²⁸*Id.*

²⁹ Charles Schwab & Co., *What Insurance Is Required for RIA Firms?*, available at <https://advisorservices.schwab.com/navigating-risk-regulation/advisor-insurance>; Sam Del Rowe, *Schwab Requiring RIA Firm Clients to Purchase Errors and Omissions, Other Insurance*, Financial Advisor IQ (Dec. 20, 2021). Schwab’s 2022 Annual Report reflects that its RIA client base continued to grow following implementation of the insurance requirement.

³⁰Chuan Qin & Craig McCann, *RIA Insurance Mandates Didn’t Reduce Access to Advisory Services*, SLCG Economic Consulting (Aug. 2024), available at <https://www.slcg.com/resources/blog/713> (finding, on the basis of state-level data comparing Oregon and Oklahoma to non-mandate states, that insurance requirements had no material effect on the number of financial advisers).

III. FIVE REFINEMENTS TO STRENGTHEN THE PROPOSAL

Should FINRA answer Question F.4 of Regulatory Notice 26-06 affirmatively, as this comment urges, five refinements would, in my view, materially enhance the resulting framework's operational efficacy and doctrinal coherence.

A. Condition the Disclosure Obligation on the Filing of a Statement of Claim, Not on a Party Request

A disclosure regime that operates only upon claimant request places the burden of information-seeking on the least-informed, least-resourced, and most frequently unrepresented party. The federal initial-disclosure model, which requires production “without awaiting a discovery request,” is the preferable template.³² Conditioning disclosure on the filing of a Statement of Claim, with production due within a fixed period (for example, thirty days of the Answer or panel appointment, whichever is earlier), eliminates the risk that *pro se* claimants will fail to invoke a right they do not know they possess. Again, this is precisely the architecture PIABA has urged in its recent correspondence with FINRA.

B. Specify the Content of Disclosure

To avoid the interpretive disputes that have occasionally attended Rule 26 disclosures in federal court, FINRA should specify the required content with particularity: (i) the identity of each carrier; (ii) applicable policy limits (per-claim and aggregate); (iii) material exclusions relevant to the allegations in the Statement of Claim; (iv) any reservation-of-rights position known to the respondent; and (v) an affirmation, where applicable, that no such coverage exists. Specification of content eliminates the strategic ambiguity that has sometimes rendered insurance disclosure in federal practice less informative than the rule contemplates.

C. Preserve Inadmissibility at the Merits Hearing

³² Fed. R. Civ. P. 26(a)(1) (requiring a party, without awaiting a discovery request, provide to the other parties for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment).

The 2018 Regulatory Notice 18-22 proposal, and PIABA’s more recent correspondence, each contemplated that insurance information would be discoverable on a confidential basis but would remain inadmissible at the merits hearing absent extraordinary circumstances. That architecture is sound and should be preserved. The inadmissibility rule addresses the legitimate concern that arbitrator knowledge of coverage limits might, at the margins, influence awards in ways unrelated to the merits of the underlying claim. Confidentiality-plus-inadmissibility permits disclosure to discharge its settlement-facilitation and collectability-signaling functions without disturbing the merits-adjudication function of the hearing itself.

D. Pair Disclosure with a Tailored Substantive Mandate for High-Risk Firms

Disclosure is a necessary but not sufficient reform. Where disclosure reveals that a respondent carries no coverage, the downstream remedies available to a prevailing claimant remain limited. For that reason, FINRA should pair the disclosure rule with a substantive coverage mandate calibrated to firm size and risk profile. The most rigorous proposal in the scholarly literature, advanced by Professors Gana and Edwards, would require firms to maintain the greater of \$1 million in coverage or 2% of assets under management.³³ Such a formulation avoids the relative-cost inequity that flat-dollar mandates produce and naturally indexes to firm growth without the need for periodic regulatory recalibration.

At a minimum, FINRA should apply a substantive coverage requirement to firms already designated as “Restricted Firms” under Rule 4111.³⁴ These are firms whose risk profile FINRA has already, by rule, determined to warrant heightened obligations. Requiring them to maintain errors-and-omissions coverage would do enormous good simply by closing the most acute gap between regulatory risk-identification and investor-recovery protection.

E. Pair Disclosure with Aggregated, De-Identified Public Reporting

Finally, the signaling function described in Part II.B is maximized when aggregated data is made available to the public, rather than held only by the regulator. FINRA should commit to periodic

³³Gana & Edwards, *supra* note 7, at 11-12 (proposing that coverage requirements be tied to assets under management, with firms required to maintain the greater of \$1 million in coverage or 2% of AUM).

³⁴Benjamin P. Edwards, *Adversarial Failure*, 77 Wash. & Lee L. Rev. 1053 (2020) (describing the deficiencies of the current expungement process and their effect on public records of broker misconduct).

publication of de-identified, firm-category-level statistics on the incidence of insurance coverage among respondent member firms in customer arbitrations, and on the relationship between the presence or absence of such coverage and the ultimate payment status of awards. Such publication would complement BrokerCheck, address the public-records deficits that other scholarship has identified as a significant impediment to private-ordering solutions, and provide academic researchers, PIABA, and congressional oversight committees with the empirical substrate needed to evaluate the proposal's long-term efficacy.

IV. CONCLUSION

Questions F.4 and K.1 through K.3 of Regulatory Notice 26-06 invite a long-overdue reckoning with the recognition that the information environment surrounding customer arbitration has meaningful distributional consequences, and that those consequences fall most heavily on retail investors who entered the arbitration forum in the expectation that a favorable award would translate into recovery. The Senate Appropriations Committee has said so, the GAO said so a quarter century ago, FINRA's own 2018 data said so, and the Wilkerson award said so with the concreteness that only a named investor's loss can supply.

Mandatory insurance disclosure is not a complete solution. It does not capitalize an undercapitalized firm, nor does it create a recovery pool for investors whose respondents carry no coverage and maintain no assets. What it does, reliably and at negligible administrative cost, is equip every participant in the arbitration process with information that is currently held asymmetrically. It improves settlement quality, surfaces collectability risk at the earliest productive moment, and supplies the regulator and the market with data whose absence has for years frustrated attempts to quantify and remediate the unpaid awards problem. It does these things, moreover, by importing a framework, federal initial disclosure under Rule 26, that has operated for three decades in Article III courts without destabilizing the liability insurance market, and by replicating an architecture, Oregon's, Oklahoma's, Kansas's, and Schwab's, whose natural-experiment data refutes the industry's "access to advice" objection on the merits.

The 2000 GAO report, the 2018 Discussion Paper, the 2018 18-22 proposal, the 2021 PIABA update, the 2024 Senate Appropriations language, and the 2025 PIABA comment correspondence all converge on the same conclusion: the time for disclosure is now, and the time for a paired

substantive mandate is soon. I respectfully urge FINRA to adopt the proposed disclosure framework, subject to the five refinements identified in Part III, and to take up the substantive coverage question in a parallel rulemaking without further delay.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dontay Phillips", written over a horizontal line.

Dontay Phillips, Esq.
FINRA Arbitrator