CHAPMAN | ALBIN

April 27, 2026

Via Email Only to pubcom@finra.org

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 Processes

Dear Ms. Mitchell:

I am an attorney who regularly represents investors and investment fraud victims in FINRA arbitration, including customers harmed by misconduct committed by FINRA member firms and their associated persons. I submit this comment in response to FINRA Regulatory Notice 26-06 (the Notice) to urge FINRA to remain faithful to its statutory and practical investor-protection mission.

The Notice asks how FINRA should modernize its arbitration rules, guidance, and processes. Modernization should not mean making FINRA arbitration more like private, industry-designed arbitration or civil litigation only when that benefits member firms. FINRA arbitration is the forum that broker-dealers have required customers to use for decades. Because investors are compelled into this forum, FINRA should preserve every rule that makes the forum fair, transparent, accessible, and capable of holding member firms accountable.

Most of the industry-facing proposals addressed in the Notice would make it harder for customers to bring claims, obtain discovery, present their cases, receive complete remedies, or collect awards. Those proposals would not promote efficiency in any meaningful sense. They would shift costs and risk to customers, reward delay and concealment, and weaken public confidence in the only practical forum available to many investors.

FINRA is required to have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. Exchange Act Section 15A(b)(6), 15 U.S.C. 78o-3(b)(6). That standard should guide every issue raised in the Notice.

Summary of Position

FINRA should prioritize reforms that strengthen customer access, transparency, discovery, award collectability, and arbitrator independence. In particular:

- FINRA should not permit pre-dispute contractual waivers of the customer right to use the FINRA forum, whether based on dollar amount, complexity, account title, or an institutional label.

- FINRA should not convert the eligibility rule into a strict statute of repose and should not expand prehearing motions to dismiss.
- FINRA should broaden, not narrow, the arbitrator pool, preserve all-public panel protections, and maintain meaningful public-arbitrator independence standards.
- FINRA should improve procedural training and discovery enforcement, but should not provide substantive legal or product training that risks placing FINRA's thumb on the scale.
- FINRA should update the Discovery Guide, require insurance coverage disclosure, and sanction boilerplate discovery objections.
- FINRA should maintain full punitive damage authority, reject caps and pre-dispute waivers, and reject any special punitive-damage appeals process.
- FINRA should expand access to explained decisions in a customer-protective way without turning arbitration into court-style litigation.
- FINRA should preserve the Arbitration Awards Online database and make it more searchable, not less transparent.
- FINRA should finally address unpaid awards through a recovery pool, insurance requirements, enhanced jurisdiction over control persons, and stronger consequences for firms and individuals connected to unpaid awards.

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

FINRA should reject proposals to differentiate customer access to the FINRA forum based on whether a claim is characterized as complex, large, institutional, or retail. Rule 12200 is one of the most important investor-protection provisions in the FINRA Code. It preserves a customer's ability to obtain FINRA arbitration when the dispute is between a customer and a member or associated person and arises in connection with the member's or associated person's business activities. The rule should not be weakened by categories that member firms can manipulate through account paperwork, product design, or entity formation.

The distinction between retail and institutional customers is often artificial in investor disputes. Retail customers are frequently advised by brokers to establish trusts, LLCs, family entities, or other account structures for estate planning, asset protection, tax planning, or access to products the broker describes as exclusive or sophisticated. That paperwork does not transform the customer into a securities professional, eliminate reliance on the broker's advice, or justify stripping the customer of FINRA forum protections. Nor should a broker-dealer be permitted to recommend a complex product and then argue that the resulting complexity makes the customer's claim too complex for FINRA arbitration.

FINRA's own data in the Notice undermines the premise that large claims justify a categorical forum change. FINRA reports that, from January 2016 through June 2025, only approximately 1 percent of closed customer cases involved claims greater than $10 million, and only 6 percent involved claims between $1 million and $10 million. FINRA also reports that fewer than 1 percent of awards exceeded $10 million and fewer than 1 percent exceeded $5 million. A rule change that weakens customer rights because of a tiny subset of cases would be disproportionate and inconsistent with investor protection.

Pre-dispute opt-outs are particularly dangerous. In the real world, customer agreements are not negotiated. They are take-it-or-leave-it documents presented as a condition of opening or maintaining an

account. If FINRA permits firms to preselect alternative fora for certain categories of claims, the industry will quickly write those exclusions into standard forms. That would not reflect customer consent. It would reflect superior bargaining power.

Alternative arbitration fora selected by the brokerage industry are not a substitute for FINRA arbitration. FINRA arbitration includes rules, disclosures, fee structures, arbitrator classifications, customer protections, and public award transparency that private fora do not necessarily replicate. Allowing firms to move selected disputes to alternative fora would create incentives to route the most serious cases away from the most transparent securities arbitration forum.

FINRA should distinguish between pre-dispute and post-dispute choices. After a dispute has arisen, a customer represented by counsel can make an informed decision about whether a particular procedural accommodation, alternative forum, or court action serves the customer's interests. But before the dispute exists, the firm controls the documents, the customer lacks information, and the consequences of waiver are not understood. FINRA should prohibit pre-dispute waivers of FINRA forum access and allow customers, at a minimum, to choose FINRA arbitration post-dispute notwithstanding contrary forum-selection language.

FINRA should also reject the idea that both parties must agree post-dispute before FINRA arbitration may proceed. Such a rule would give member firms a unilateral veto over the customer's chosen forum. It would turn Rule 12200 from a customer right into a firm option.

Eligibility and Motions to Dismiss (Requests for Comment B(i) and B(ii))

FINRA should not eliminate the eligibility rule in favor of statutes of limitations, nor should it amend the rule to create a strict statute of repose tied mechanically to a purchase date or transaction date. The current eligibility rule is imperfect, but its flexibility is important because securities fraud and negligent supervision often unfold over time.

Rigidly tying eligibility to the original transaction date would unjustly bar meritorious claims involving long-term illiquid products, private placements, non-traded REITs, alternative investments including those sold in fraudulent Ponzi schemes, annuities, and other products whose true value or risks may be concealed for years. Customers often do not learn that the represented value was illusory until a sponsor reprices, suspends redemptions, restates values, stops paying distributions, enters bankruptcy, or becomes the subject of regulatory action. The actionable event may include later misrepresentations, fraudulent account statements, concealment, negligent supervision, unsuitable hold recommendations, or continuing breaches of duty within the six-year period.

FINRA should expressly preserve eligibility for claims involving continuing fraud, concealment, ongoing damages, delayed discovery of injury, and misconduct that continues into the six-year period. A strict repose rule would reward bad actors who successfully conceal misconduct and would encourage firms to delay disclosure until claims become procedurally vulnerable.

Nor should FINRA expand prehearing motions to dismiss. FINRA's current rules properly discourage dispositive motions before a claimant has presented the case in chief. The Notice correctly recognizes that extensive dispositive motion practice can hamper efficient arbitration. In customer cases, early motions to dismiss often function as delay tactics and discovery-suppression devices. They force

customers to brief legal and factual disputes before they have obtained the firm's internal records, supervisory materials, communications, exception reports, and product due diligence files.

If FINRA changes anything, it should narrow abusive motion practice, not expand it. FINRA should clarify that arbitration pleadings are notice pleadings, not federal-court complaints subject to heightened detail. Motions to dismiss based on eligibility or other fact-intensive grounds should not be heard until after meaningful discovery has been completed, except in the narrow circumstances already recognized by Rules 12504 and 13504. Panels should be directed to impose fees, costs, attorneys' fees, and other sanctions for frivolous or bad-faith dispositive motions.

Proposals to permit motions before the answer due date should be rejected. That timing would invite respondents to avoid answering, avoid disclosure, and convert arbitration into motion practice before the panel has a factual record. Customers should not be forced to litigate dispositive issues against the party that controls most of the relevant evidence before discovery begins.

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

FINRA should broaden, not narrow, the arbitrator pool. I oppose FINRA's recent decision to require a four-year college degree and five years of full-time professional work experience for new arbitrators. A bachelor's degree requirement arbitrarily excludes many capable adults, including small business owners, retirees, veterans, tradespeople, caregivers, community leaders, and investors with practical experience. FINRA arbitration substitutes for the civil jury trial that investors generally do not receive in broker-dealer disputes. The arbitrator pool should be closer to a jury pool, not a credentialed professional guild.

Subject-matter expertise should not be the governing objective for public arbitrators. Courts do not require jurors to hold finance degrees, and many judges decide complex securities matters without prior careers in the securities industry. Arbitrators can understand evidence, assess credibility, apply instructions and rules, and weigh expert testimony without being industry insiders. A pool that overemphasizes legal, financial, or professional credentials risks overrepresenting repeat-player perspectives and underrepresenting ordinary investors.

If FINRA maintains minimum qualifications, it should accept equivalent experience, professional certifications, public service, military service, small-business ownership, or demonstrated investing experience in lieu of a four-year degree. FINRA should also recruit younger arbitrators, retirees from non-financial professions, community leaders, educators, and individuals outside the traditional lawyer/finance pipeline.

FINRA should not dilute the definition of public arbitrator. The current disqualification criteria, including limits on professional time spent representing industry interests and cooling-off periods, are essential guardrails. A person who has spent a substantial portion of a career representing broker-dealers or securities industry interests may have a worldview shaped by those relationships even if the person no longer has a formal industry role. Expanding the public roster by reclassifying industry-adjacent arbitrators as public would reduce confidence in neutrality.

FINRA should preserve Rule 12403(c)(1)(A), which permits parties to strike all non-public arbitrators from the non-public list in customer cases. The all-public panel option was a major investor-protection reform. Removing or weakening it would send the message that FINRA is retreating from

neutrality and restoring industry influence over customer panels. Customers compelled into FINRA arbitration should not also be compelled to accept an industry arbitrator.

FINRA should amend its rules so all claimants collectively and all respondents collectively share the same number of strikes during initial panel selection. The current approach can distort the process when one side has multiple separately represented parties. Equal side-based strikes would better preserve parity. If FINRA increases list sizes, it should provide proportionate strikes and better disclosures so the additional names increase meaningful choice rather than merely lengthening the process.

Arbitrator Training (Requests for Comment E)

I support additional procedural training for arbitrators. FINRA should require periodic refreshers on ethics, disclosure obligations, hearing management, discovery standards, discovery sanctions, award drafting, chairperson responsibilities, postponement standards, cybersecurity, remote hearing management, and the importance of avoiding late withdrawals. FINRA should also train panels to enforce existing discovery rules and to address boilerplate objections, discovery gamesmanship, and noncompliance promptly.

Training, however, must remain procedural rather than substantive. FINRA should not train arbitrators on the substantive law of securities claims, the elements of state-law causes of action, or the merits of particular investment products. That type of training would create serious neutrality concerns. Parties should educate arbitrators through briefing, witness testimony, cross-examination, and expert evidence in the actual case. FINRA should not supply substantive frameworks that may favor one side's legal theory.

I also oppose training that creates a hierarchy of customer claims. A retired investor′s six-figure retirement loss deserves the same respect as a multi-million-dollar institutional claim. FINRA should train arbitrators to manage complexity and volume, not to treat certain claims as more legitimate or more worthy of procedural accommodation than others.

Additional mandatory training should be reasonable in length and frequency so it does not deter public arbitrators from serving. FINRA can combine concise mandatory refreshers with optional modules, but mandatory substantive product courses should be avoided.

Discovery (Requests for Comment F)

The Discovery Guide should be modernized and enforced. The Guide improved arbitration by reducing adjudication by ambush, but it no longer reflects the realities of the modern brokerage industry, electronic communications, complex products, and supervisory technology. The main problem is not a lack of discovery rules. It is inconsistent enforcement and the routine use of boilerplate objections by respondents.

FINRA should make clear that presumptively discoverable documents must be produced unless the respondent establishes a specific, case-based objection. General objections based on burden, confidentiality, privacy, proprietary information, or the Gramm-Leach-Bliley Act should not be sufficient. Privacy and confidentiality concerns can be addressed through protective orders, redactions of nonessential personal identifiers, and confidential treatment. They should not be used to withhold relevant documents.

The Discovery Guide should be updated to require, upon request and subject to appropriate confidentiality protections where necessary, production of nonprivileged documents such as relevant compliance manuals and written supervisory procedures; exception reports; commission and compensation runs; product due diligence files; internal product committee materials; training and sales materials; supervisory notes; CRM notes; emails, texts, chats, and other electronic communications; documents concerning similar customer complaints; and relevant regulatory correspondence or investigative materials that bear on the products, strategies, representatives, supervisors, or branch at issue.

FINRA should not create a discovery referee or an additional quasi-adjudicative bureaucracy. Such a process would increase cost, delay, and the risk of inconsistent informal guidance. Panels already have authority to compel discovery, issue orders, and impose sanctions. FINRA should train arbitrators to use that authority and should monitor repeat discovery offenders.

FINRA should resist proposals to impose numerical limits, heightened need standards, or other across-the-board restrictions on customer discovery. Customers typically begin the case with account statements and limited communications. Member firms possess the internal documents that reveal supervision, product review, compensation incentives, branch practices, and knowledge of risk. Restricting discovery would magnify the information asymmetry that already favors firms.

FINRA should amend Document Production List 1 to require disclosure of insurance coverage information in customer cases upon request. Federal courts and many state courts require disclosure of insurance because it is essential to informed case evaluation and settlement. Customers in FINRA arbitration should not be forced to spend time and money pursuing an award without basic information about collectability. Production can be confidential and inadmissible at the hearing, and should include declarations pages, relevant policy provisions, reservations of rights, and declination letters.

Hearing Oversight, Efficiency, and Technology (Requests for Comment G)

FINRA should not establish a central contact point that provides arbitrators with interpretive legal or evidentiary guidance. FINRA is the forum administrator, not an appellate court and not a shadow panel. If arbitrators begin relying on FINRA staff for legal interpretations during cases, the line between neutral administration and adjudication will blur, and parties will have little visibility into the guidance being provided.

FINRA can improve efficiency without compromising independence. FINRA staff should automatically check in when key administrative benchmarks are missed, such as delays in scheduling an Initial Prehearing Conference, delays in setting final hearing dates, repeated missed discovery deadlines, or long-pending orders. These check-ins should be administrative only: they should identify delay, ask whether assistance is needed, and prompt the panel to act. They should not suggest substantive outcomes.

Additional case-management rules are less important than enforcement of existing rules. Firms frequently delay discovery, produce documents late, and resist meaningful sanctions. FINRA should focus on prompt panel orders, stronger sanctions for noncompliance, and better training on managing discovery and hearing schedules.

FINRA should substantially improve the DR Portal. Counsel should be able to filter and sort filings by type, date, party, and issue; view a clear docket similar to PACER; receive prompt and itemized invoices; identify pending motions and orders; search filings; and use standardized filing categories for

motions to compel, discovery responses, witness lists, exhibit lists, postponement requests, subpoenas, and settlements. A mobile application or mobile-optimized portal would also improve access for counsel, parties, and arbitrators.

Punitive Damages (Requests for Comment H)

FINRA should maintain the current framework that allows arbitrators to award punitive damages. Punitive damages serve the vital purposes of punishment and deterrence in cases involving intentional, reckless, or egregious misconduct. If customers are compelled as a practical matter to bring claims in arbitration rather than court, the arbitral forum must preserve the remedies that would otherwise be available under applicable law.

FINRA′s own data shows that punitive damages are rare, not routine. The Notice reports that from March 1988 through December 2025, FINRA's forum issued approximately 47,835 awards, and only 1,324 - about 3 percent - included punitive damages. That figure does not justify a new regime of caps, waivers, special qualifications, mandatory bifurcation, or appeals. It shows that arbitrators already use punitive damages sparingly.

FINRA should not permit pre-dispute agreements that limit or preclude punitive damages. Such clauses would appear in standard account documents and would become a condition of doing business with many broker-dealers. Customers would be forced to waive a critical remedy before they know the facts, the misconduct, the loss, or the applicable law. That result is inconsistent with Rule 2268(d)(4)'s longstanding protection against provisions limiting arbitrators' ability to make awards.

FINRA should not impose caps on punitive damages. Applicable state and federal law already governs punitive damages, and courts already provide limited review under the Federal Arbitration Act and state arbitration law. FINRA should not create a special industry-only damages ceiling that would apply only because the investor′s claim is heard in arbitration.

FINRA should also reject mandatory bifurcation, heightened FINRA-created standards, special punitive-damages arbitrator qualifications, and a punitive-damages appeals process. These proposals would increase cost and delay, undermine finality, and target a remedy that firms dislike precisely because it deters egregious misconduct. It is inconsistent to argue that arbitrators are competent to dismiss claims, award compensatory damages, deny all relief, and assess costs against customers, but not competent to award punitive damages when the facts and law warrant them.

Explained Decisions in Awards (Requests for Comment I)

FINRA should expand access to explained decisions in a manner that promotes transparency without converting arbitration into court-style litigation. The current joint-request requirement gives respondents an effective veto. That is why explained decisions are rarely requested and rarely issued. If FINRA wants more transparency, it should allow any customer claimant to request a concise explained decision, preferably by the Initial Prehearing Conference or another early deadline.

Explained decisions should be concise and fact-based. They should identify the principal claims and defenses, the basic factual basis for the result, and the categories of damages awarded or denied. They need not include detailed legal analysis, formal findings of fact and conclusions of law, or damage

calculations unless the panel chooses to provide them. The objective should be transparency and confidence, not satellite litigation over the sufficiency of the explanation.

FINRA should not use explained decisions as a punitive-damages hurdle. If FINRA requires explained decisions only when punitive damages are awarded, that special requirement would chill a remedy that already is rare. Any expansion of explained decisions should apply neutrally and should not single out customer remedies for additional procedural burdens.

FINRA should increase compensation for chairpersons who write explained decisions and provide procedural guidance on concise award drafting. Expanded explained decisions may improve transparency, arbitrator accountability, and the usefulness of awards to parties, regulators, and the public, but FINRA must manage workload so the reform does not reduce the chairperson roster.

Arbitration Awards Online (Requests for Comment J)

The Arbitration Awards Online (AAO) database is essential to transparency. Customers, counsel, regulators, academics, journalists, and the public use awards to evaluate arbitrator histories, identify repeat misconduct, analyze respondent behavior, assess damages patterns, and understand how the forum functions. Because member firms and their counsel are repeat players, public access to awards helps reduce information asymmetry.

FINRA should not amend its rules to permit removal or redaction of awards from AAO. The award is the public record of a proceeding in a mandatory industry forum. Removing awards would create a memory hole that benefits firms and associated persons with repeat histories. Even where expungement is later granted, the public award should remain available with a notation or link reflecting subsequent court-confirmed expungement relief, rather than being removed or materially redacted.

FINRA should improve AAO by making awards available as structured, searchable data. Users should be able to search full text, arbitrator names, counsel names, claims, products, statutes, damages requested and awarded, punitive damages, attorneys' fees, forum fees, hearing location, panel composition, settlements reflected in stipulated awards, and links to related court confirmation or vacatur proceedings. FINRA should also improve bulk-download functionality and link awards to BrokerCheck where appropriate.

Unpaid Awards (Requests for Comment K)

FINRA must do more to solve the unpaid-award problem. A customer who proves a case, obtains an award, and cannot collect has not received justice. FINRA′s suspension remedy is inadequate because many unpaid awards involve firms or individuals that are already inactive, expelled, insolvent, or able to continue in adjacent parts of the financial services industry outside FINRA′s direct jurisdiction.

The Notice reports that in 2024 there were 1,852 customer arbitration cases closed, 232 customer awards rendered, and 15 unpaid customer awards. FINRA appears to frame unpaid awards as a small percentage of total filings, but the relevant perspective is the injured customer who won and received nothing. Each unpaid award represents a failure of the forum′s remedial promise.

The most effective solution is a national customer recovery pool administered by FINRA and funded by member assessments, fine monies where permissible, and other industry sources. FINRA should also require firms to maintain adequate liability insurance or other financial responsibility

mechanisms calibrated to business model, customer assets, product risk, complaint history, and disciplinary history. Insurance is not a moral hazard. Fraudsters are not induced to commit fraud because victims might be compensated; intentional misconduct is typically excluded from coverage, and any recovery mechanism can preserve subrogation and contribution rights against wrongdoers.

FINRA should also require control persons, owners, affiliates, successors, and holding companies that benefit from a member firm′s business to submit to FINRA jurisdiction where they are alleged to have responsibility for customer harm or asset transfers that frustrate collection. Firms and associated persons should not be able to externalize liabilities, move assets, close entities, or reappear under related structures while customers hold unpaid awards.

Recent public reporting that FINRA has returned substantial fee rebates to member firms underscores that the obstacle is not economic impossibility but priority. Investor protection should come before rebates to the industry. FINRA should work with the SEC and Congress where necessary, but it should not wait for a perfect statutory solution before implementing measures within its authority.

Form U5 Defamation Claims and CRD Integrity (Requests for Comment L)

To the extent FINRA addresses Form U5 defamation claims in this rulemaking, it should not weaken CRD, BrokerCheck, or the completeness of regulatory reporting. Accurate and complete registration information is central to investor protection, regulator oversight, and market integrity.

FINRA should not provide additional immunity that would reduce incentives for firms to make careful, accurate, and complete disclosures. Nor should FINRA provide substantive defamation-law training or instructions that risk compromising FINRA′s neutrality. Panels can decide Form U5 and related claims based on the law and evidence presented by the parties. Any procedural guidance should focus on clarity of awards, not on tilting the substantive standards.

FINRA should be especially cautious about proposals that would make it easier to remove customer dispute information or employment termination information without a rigorous process. The investor-protection purpose of CRD and BrokerCheck should remain paramount.

General Priorities (Request for Comment M)

FINRA should prioritize reforms that directly improve fairness for customers and public confidence in the forum. The most impactful steps would be preserving Rule 12200 access, rejecting expanded motions to dismiss, strengthening discovery enforcement, requiring insurance disclosure, maintaining punitive damages, improving AAO, and creating a meaningful unpaid-award solution.

Many of the topics in the Notice are interdependent. If FINRA improves discovery enforcement, case management, award transparency, and award collectability, many efficiency concerns will diminish. Conversely, if FINRA narrows access, limits discovery, expands early dismissal, caps remedies, and reduces transparency, it will create a faster forum only by making the forum less fair.

FINRA should provide more data to inform any future proposal, including data on discovery motion outcomes, sanctions, motion-to-dismiss filings and results, forum fees assessed for failed motions, arbitrator withdrawal timing, hearing postponements, award collection rates over multiple years, outcomes by panel composition, and how often firms produce insurance information voluntarily.

Conclusion

FINRA should not make changes that placate member firms at the expense of investors. The core function of FINRA arbitration is not to reduce industry litigation risk. It is to provide a fair, accessible, transparent, and effective forum for resolving disputes in a market where customers typically have no meaningful ability to negotiate dispute-resolution terms.

Accordingly, FINRA should reject proposals that weaken customer access to the FINRA forum, narrow eligibility, expand prehearing dismissal, dilute public arbitrator standards, limit discovery, cap punitive damages, create special appeals, remove awards from AAO, or otherwise reduce accountability. FINRA should instead strengthen procedural fairness, discovery compliance, arbitrator independence, transparency, and collection of awards.

I appreciate the opportunity to comment on Regulatory Notice 26-06.

Respectfully submitted,

/s/ *Jason T. Albin*

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Attorney for Investors