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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

EXECUTIVE SUMMARY

• FINRA's mandate under 15 U.S.C. § 78o-3(b)(6) requires rules designed to protect investors and the public interest. The proposals in Regulatory Notice 26-06, taken together, move in the opposite direction.
• The arbitration forum is mandatory and structurally imbalanced. Any modernization must increase, not decrease, investor protections.
• The proposals would expand early dismissal mechanisms, restrict arbitrator neutrality, and introduce procedural barriers that disproportionately harm investors.
• FINRA should reject changes that: (i) enable forum manipulation, (ii) expand motions to dismiss, (iii) dilute the public arbitrator standard, (iv) limit discovery, or (v) weaken remedies such as punitive damages.
• FINRA should instead prioritize enforcement of existing rules (including Rules 3110 and 8210), transparency, and meaningful remedies for investors.

Dear Ms. Mitchell:

I represent investors in FINRA arbitration proceedings involving misconduct by FINRA-registered representatives and broker-dealers. This submission is made to ensure FINRA remains aligned with its statutory mandate under 15 U.S.C. § 78o-3(b)(6): to protect investors and the public interest. The proposals set forth in Regulatory Notice 26-06, taken collectively, risk materially undermining that mandate.

FINRA arbitration is not a voluntary forum between equals—it is a mandatory system imposed through pre-dispute arbitration clauses drafted by member firms. Courts have recognized arbitration as a substitute for litigation under the Federal Arbitration Act (9 U.S.C. § 1 et seq.), but

the legitimacy of that substitution depends on fairness, neutrality, and enforceability. The proposals here risk eroding each of those pillars.

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

Proposals to differentiate procedural requirements or to permit FINRA member firms to direct disputes into alternative arbitration forums based on whether a claim is deemed "complex," "large," or involves an "institutional" versus "retail" investor are fundamentally flawed and dangerous. These classifications are not objective; they are often artificial constructs shaped and, in many cases, controlled by the FINRA member firm itself. Retail customers are routinely advised by their brokers to invest in complex products or strategies, or to do so through entities such as LLCs or trusts, ostensibly for estate planning, asset protection, or access to "elite" investments. These structural decisions do not alter the customer's actual sophistication or their reliance on the broker's advice. A retiree investing through a single-member LLC remains a retail investor in every meaningful sense, yet under the proposed framework could be reclassified in a way that strips critical regulatory protections—often without any awareness that such consequences exist. Allowing rules to turn on these firm-driven classifications, or permitting firms to select alternative forums with fewer or no protections based on those classifications, creates a clear and dangerous incentive: it allows firms to engineer conditions that limit accountability for their own misconduct and provides a pathway for bad actors to insulate themselves from liability, thereby lowering the bar for investor protection.

Equally important is the distinction between pre-dispute and post-dispute procedural variations. Pre-dispute provisions are inherently coercive, embedded in standardized agreements drafted by firms at a time when customers lack both the leverage and knowledge to meaningfully assess or negotiate their rights. Expanding such provisions would only deepen that imbalance. By contrast, post-dispute flexibility—when the customer is represented by counsel and fully informed poses far less risk and allows for appropriate case-specific customization. Allowing customers, post-dispute to determine whether to proceed in arbitration or litigation aligns with FINRA's investor protection mandate. Diverting claims into industry-selected alternative forums under the guise of efficiency or specialization does not enhance fairness; it merely shifts disputes to venues where the existing power imbalance is amplified and protections are diminished. The current system, which ensures customer access to FINRA arbitration regardless of claim type, provides a necessary baseline of protection that should not be eroded.

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

The current practice of permitting eligibility-based motions to dismiss risks forcing investors out of arbitration and back into court years after filing, effectively restarting litigation from scratch and creating significant inefficiency. This problem is particularly acute in cases involving long-term, illiquid investments such as private placements, non-traded REITs, and annuities, where losses are often concealed for years through sponsor controlled and artificially maintained Net Asset Values (NAV). In these cases, the operative "event" giving rise to the claim is frequently the eventual realization of substantial losses, not the initial purchase, a distinction

that rigid time bars fail to capture. Moreover, many jurisdictions do not apply statutes of limitations to arbitration, recognizing its equitable nature. FINRA's existing rules already empower arbitrators to interpret and apply the Code, and introducing statutory style limitations would only create confusion and inconsistency. Properly applied, the current eligibility rule, which focuses on the "occurrence or event" within six years, is sufficiently flexible to account for ongoing fraud, continuing relationships, and the delayed discovery of harm inherent in complex financial products.

The eligibility rule should not be amended to operate as a strict statute of repose. Such a change would incentivize negligent supervision and reward bad actors who successfully conceal misconduct over extended periods. Many claims arise from ongoing or continuous wrongdoing, including long tailed Ponzi schemes, manipulated account statements, and sustained misrepresentations, where the harm is not reasonably discoverable until years later. Tying eligibility strictly to the date of a securities transaction ignores the reality that claims often arise from subsequent fraudulent conduct, such as the creation of false valuations or statements designed to mask losses. The current rule appropriately allows arbitrators to evaluate the full factual context, whereas a rigid cutoff would arbitrarily bar meritorious claims and undermine investor protection.

Expanding the industry's ability to dispose of cases through prehearing motions would only increase abusive motion practice and prevent claims from being heard on the merits. FINRA's own guidance discourages such motions, and that framework should be reinforced, not weakened. Rather than adding procedural hurdles, FINRA should clarify that arbitration pleading standards do not require court level specificity and should require that discovery be completed before eligibility motions are considered. This would ensure that panels have a complete factual record and prevent firms from using early motions to stifle discovery and delay resolution. The current framework, which disfavors dispositive motions prior to the conclusion of a party's case in chief, is essential to maintaining fairness for the investing public. Allowing earlier or broader dismissal powers would further tilt the playing field in favor of member firms.

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

I oppose FINRA's recent changes requiring a four-year college degree and five years of professional experience for arbitrators. These requirements arbitrarily disqualify a vast segment of the population, particularly adults without a bachelor's degree. Further increasing minimum qualification requirements would artificially shrink the arbitrator pool and increase reliance on repeat arbitrators. These risks create panels that are more aligned with industry perspectives and less representative of the investing public. FINRA arbitration exists as a substitute for the right to a jury trial, and the arbitrator pool should therefore resemble a jury pool as closely as possible. Jurors are not required to have subject matter expertise, and neither are many judges. Yet these new requirements make it more difficult to become a part-time arbitrator than to become a Series 7 licensed financial advisor, which does not require a degree. The arbitrator pool should instead be broadened to include individuals who have invested with a FINRA member and can complete the required training, ensuring a true jury of peers.

FINRA is required to maintain rules that are designed, in general, to protect investors and the public interest under 15 U.S.C. § 78o 3(b)(6). I oppose any amendments to the definition of "public arbitrator" that dilute independence standards. The current disqualification criteria, including the twenty percent professional time threshold and applicable cooling off periods, are critical safeguards. Individuals who have spent a significant portion of their careers representing industry interests may develop a defense-oriented perspective that is inconsistent with neutrality. Expanding the roster to include so-called industry lite arbitrators would erode the legitimacy of the forum. The existing pool already trends toward an older and more professional demographic. FINRA should focus on recruiting genuinely neutral individuals rather than weakening independence standards.

Rule 12403(c)(1)(A), which permits parties to strike all non-public arbitrators, should not be amended. This rule represented a significant advancement in investor protection by addressing the longstanding structural bias that previously required an industry representative on every arbitration panel. Reversing or weakening this rule would undermine panel neutrality and directly conflict with FINRA's investor protection mandate.

FINRA should, however, amend its rules to allow all claimants collectively and all respondents collectively to share an equal number of strikes. This would ensure that one side does not gain an unfair procedural advantage based solely on the number of separately represented parties. So long as the rule applies equally to both sides, it promotes fairness and impartiality in the arbitrator selection process.

Arbitrator Training (Requests for Comment E)

I support additional procedural training, including refresher courses on ethics, hearing structure, and the role of the chairperson. Continuing education on FINRA rule changes, as well as training aimed at reducing late arbitrator withdrawals, would also be beneficial. However, any such training must remain strictly focused on procedure, not substance. I oppose training that creates a hierarchy among customer claims or suggests that certain types of cases are more significant than others. All claims, whether involving a modest retirement account or a large trading portfolio, are entitled to equal respect and consideration. Additional training should be directed toward managing complex multi-party disputes and large scale document production, not toward substantive legal standards or specific investment products. Training arbitrators on elements of law or complex financial instruments risks undermining FINRA's neutrality by influencing how claims are evaluated and effectively placing a thumb on the scale. Substantive issues must remain within the province of party advocacy and expert testimony, where they can be properly tested through the adversarial process.

Discovery (Requests for Comment F)

The Discovery Guide is currently slanted in favor of respondents and must be amended to reflect the realities of the modern securities industry. While the Guide represented an improvement over what was effectively adjudication by ambush, it is now outdated and routinely undermined in

practice. Broker dealers frequently abuse the process through boilerplate objections, particularly in response to requests for exception reports and commission data, often invoking the Gramm Leach Bliley Act incorrectly. FINRA must enforce the Guide more rigorously and make clear that objections to presumptively discoverable materials, absent a specific and substantiated basis, constitute sanctionable misconduct. The Guide should also be updated to require the production of complete compliance manuals, regulatory investigation materials including FINRA Rule 8210 requests and SEC Wells notices, and all relevant communications, including emails, text messages, and internal messaging systems, which are often critical to understanding the conduct at issue and ensuring a fair process.

I oppose the creation of a so called discovery referee or any additional layer of administrative bureaucracy. FINRA already maintains a comprehensive Code of Arbitration Procedure, including multiple rules specifically governing discovery. The deficiency lies not in the absence of rules but in the failure to enforce them. FINRA should instead focus on ensuring that arbitrators actively enforce existing obligations, reject boilerplate objections, and impose meaningful sanctions on repeat offenders. Creating new administrative roles risks introducing additional delay and potential industry influence without addressing the underlying problem.

FINRA must also resist efforts to impose further limitations on discovery. Access to relevant information is fundamental to a fair adjudicatory process, not a discretionary benefit. Broker dealers are already required under SEC rules to maintain books and records in an accessible format, and any objection based on burden or cost must be supported by concrete evidence of an actual unreasonable burden. Unsupported assertions should not be sufficient to deny production.

Finally, the Discovery Guide should be amended to require disclosure of insurance coverage upon request. In federal courts and the vast majority of state courts, liability insurance disclosure is mandatory. The absence of such disclosure in FINRA arbitration places investors at a significant disadvantage by preventing them from assessing the collectability of an award and making informed strategic decisions. The Guide should require production of policy declarations, the complete policy, and any declination or reservation of rights letters to ensure transparency and fairness in the process.

Hearing Oversight and Efficiency (Requests for Comment G)

FINRA should not create a central contact point to provide interpretive guidance. Such a mechanism risks encouraging arbitrators to rely on FINRA staff for legal interpretations, thereby blurring the critical line between administrative support and adjudicative decision making. This undermines the independence of the panel and raises concerns about improper influence on the outcome of disputes. Instead, FINRA should focus on improving the clarity and accessibility of its existing written guidance and enhancing training on procedural and evidentiary matters, where additional support can be provided without encroaching on the arbitrators' role as neutral decision makers.

No new case management requirements are necessary. The priority should be to enforce

existing timelines and procedural rules, which are already sufficient if properly applied. Firms frequently fail to meet discovery obligations, and arbitrators too often hesitate to impose meaningful sanctions for noncompliance. Strengthening enforcement mechanisms is far more effective than layering additional deadlines onto a system that already suffers from inconsistent enforcement. If key procedural milestones, such as the scheduling of an Initial Prehearing Conference or a final hearing, are not met, FINRA staff should automatically initiate administrative check-ins with the parties and the panel. This approach removes the burden from parties to seek intervention while promoting efficiency and ensuring timely progression of cases without compromising arbitrator independence.

FINRA should also prioritize practical technological improvements. Developing a mobile application for counsel, improving billing integration to ensure timely issuance of invoices, and enhancing the DR Portal to provide clearer and more functional docket visibility would materially improve the user experience. The portal should allow for better filtering of filings and include clearly defined filing categories for common motions. These targeted enhancements would increase efficiency and transparency without altering the fundamental neutrality of the arbitration process.

Punitive Damages (Requests for Comment H)

The current framework allowing arbitrators to award punitive damages must be maintained. Punitive damages are awarded in less than one percent of cases and serve essential functions of punishment and deterrence. The industry's effort to limit these awards is not driven by systemic abuse, but rather by a reaction to a small number of high-profile cases in which arbitrators found that the underlying conduct warranted such relief. Eliminating or restricting this authority would shield serious misconduct from meaningful consequences and directly undermine FINRA's investor protection mandate.

FINRA should not permit pre-dispute agreements that limit or eliminate the availability of punitive damages. Such provisions force investors into a Hobson's choice, requiring them to waive a critical remedy as a condition of opening an account. This dynamic creates a perverse incentive structure in which firms can engage in egregious conduct with reduced fear of meaningful punishment. The availability of punitive damages is a necessary deterrent and should not be contractually waived before any misconduct occurs.

No caps on punitive damages should be imposed. Existing state and federal law already provide well established standards and safeguards governing such awards, making additional FINRA specific limitations both redundant and unnecessary. I also oppose the introduction of additional procedural hurdles, such as bifurcated hearings or mandatory explained decisions, which would discourage arbitrators from awarding punitive damages and increase the cost and duration of proceedings without providing meaningful additional protection. It is illogical to suggest that arbitrators are sufficiently qualified to dismiss a claimant's case in its entirety or award damages against a claimant yet somehow lack the competence to award punitive damages against a brokerage firm. No special qualifications or additional procedural barriers are warranted.

I also strongly oppose the creation of a separate appeals process for punitive damages. The Federal Arbitration Act and applicable state law already provide mechanisms to vacate awards in cases involving fraud, corruption, or arbitrator misconduct. Introducing a targeted appeals process for punitive damages would erode the finality of arbitration and disproportionately benefit member firms by subjecting only unfavorable outcomes to heightened review.

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

The AAO database is a critical resource for parties, attorneys, researchers, regulators, and the public. It allows investors to evaluate arbitrator track records, identify patterns of misconduct, and reduce the information asymmetry that exists between repeat player firms and one-time investors. Access to this information is essential to ensuring transparency and informed decision making within the arbitration process.

FINRA should not amend its rules to permit the removal or redaction of awards from AAO. Transparency is fundamental to investor protection and effective regulatory oversight. The expungement process is already flawed, with high approval rates and minimal opposition, and allowing awards to be removed from public view would only exacerbate that problem. Doing so would create a functional memory gap that obscures patterns of misconduct and undermines confidence in the integrity of the system. Complete awards must remain publicly accessible.

FINRA should instead focus on enhancing AAO by improving its usability and analytical value. Awards should be converted into structured and searchable data, with integrated outcome analytics and clear links to related court proceedings and BrokerCheck profiles. Improved full text search capabilities would further strengthen the database as a tool for transparency and accountability.

Unpaid Awards (Requests for Comment K)

FINRA has failed to make substantive progress on the serious unpaid arbitration award problem for decades now. As of 2024, approximately 25% of investor awards remain unpaid, with roughly 37 cents on the uncollected dollar. These figures reflect a persistent structural deficiency rather than an isolated issue. The most effective solution would be a national investor recovery pool administered by FINRA, funded by member firms, which is clearly feasible since FINRA has separately refunded $50 million and $100 million to the industry in the last ten months alone. Insurance mandates have been shown in states like Oregon to not reduce access to advisory services and should also be considered. FINRA should also pursue legislative changes to prevent bankruptcy discharge of unpaid awards and strengthen disclosure requirements.

The moral hazard argument against insurance or a recovery pool is unfounded. Bad actors are not incentivized to commit fraud by the existence of a safety net, as intentional misconduct is typically excluded from coverage and the pool would retain the right to pursue the bad actor. The

unpaid award problem must be addressed regardless of the forum or the title of the financial professional.

CONCLUSION

FINRA must ensure that any rule changes strengthen—not weaken—investor protection. The arbitration system derives its legitimacy from fairness, neutrality, transparency, and enforceability. The proposals in their current form risk undermining each of these principles and should be reconsidered accordingly.

Sincerely,
/s/ Adolfo J. Anzola
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