

May 1, 2026

**Via E-MAIL**

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

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

Dear Ms. Mitchell:

I am an attorney with 26 years of experience in securities arbitration and investment fraud matters. I have represented both claimants and respondents in FINRA arbitrations, including serving as in-house counsel at a large brokerage firm and as outside defense counsel for one of the nation's largest securities defense firms. For the past eight years, I have focused my practice exclusively on representing investment fraud victims through my firm, Daren A. Luma, PLLC (www.lumalegal.com). This unique perspective—from both sides of the aisle—gives me clear insight into how FINRA's arbitration forum actually functions.

I write to urge FINRA to reject the vast majority of the proposals outlined in Regulatory Notice 26-06. Many of these recommendations would fundamentally weaken investor protections in favor of member firms and registered representatives. Such changes would directly violate FINRA's statutory obligations under Section 15A(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o-3(b)(6)), which requires that FINRA's rules be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, ... ***and, in general, to protect investors and the public interest.***" These proposals also stand in stark contradiction to FINRA's ***own stated mission*** "to ***safeguard the investing public against fraud and bad practices***" and to ***protect investors while ensuring market integrity***. Rather than modernizing the forum to better serve investors, many of the suggested changes would tilt the playing field even further in favor of the securities industry. Below, I highlight three of the most egregious proposals.

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

Allowing member firms to opt out of FINRA's forum for certain claims creates a blatant conflict of interest and perverse incentive for bad actors to shield themselves from accountability. This would directly undermine FINRA's obligations under Section 15A(b)(6) of the Securities

Exchange Act (15 U.S.C. § 78o-3(b)(6)) to protect investors and the public interest. If any party is to have the ability to select an alternative forum, it must be the *customer* — not the firm whose conduct is being challenged. Moreover, that customer choice should expressly include the right to pursue claims in a court of law with the full protections of a jury trial.

FINRA cannot have it both ways. If the industry and FINRA itself believe that FINRA arbitration is no longer suitable for significant categories of investor disputes, then FINRA should step aside entirely and allow customers to file directly in court rather than creating a patchwork of industry-favorable alternative forums that further erode investor protections.

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

FINRA should **not** expand eligibility rules or provide member firms with additional methods to dismiss cases before a full hearing on the merits. Doing so would further tilt the arbitration process against investors and directly contravene FINRA's statutory mandate under Section 15A(b)(6) of the Securities Exchange Act (15 U.S.C. § 78o-3(b)(6)) and its own mission to protect investors.

The current eligibility rule already provides sufficient flexibility to address claims involving delayed discovery of harm, ongoing fraud, and the unique nature of long-term, illiquid products such as private placements, non-traded REITs, and annuities. Introducing a stricter statute of repose or rigid time bars would reward firms that conceal misconduct and penalize investors who reasonably rely on their advisors and the firm's supervision. Many harms only become apparent years later due to artificial valuations, continued misrepresentations, or failures in supervision.

Similarly, providing the industry with broader or earlier opportunities for pre-hearing motions to dismiss would encourage abusive motion practice, increase costs and delays for investors, and prevent meritorious claims from being heard on the evidence. FINRA's existing guidance already discourages such early dismissals. Instead of expanding these tools for respondents, FINRA should reinforce that pleading standards in arbitration are not as stringent as in federal court and that discovery should generally be completed before any dispositive motion is considered. This ensures panels have a complete record and upholds basic fairness.

Expanding dismissal powers would undermine the core purpose of arbitration as an accessible forum for investors and further erode public confidence in FINRA's commitment to investor protection.

### **Punitive Damages (Requests for Comment H)**

The proposals to limit or further restrict punitive damages are outrageous and fundamentally anti-investor. Punitive damages are awarded in *less than 1% of cases* — typically only in response to the most egregious, intentional misconduct by firms or their representatives. FINRA's apparent effort to shield even this narrow category of the worst behavior from meaningful consequences directly violates its obligations under Section 15A(b)(6) of the Securities Exchange Act (15 U.S.C. § 78o-3(b)(6)) and its stated mission to protect investors.

Rather than finding new ways to restrain arbitrators from imposing punitive damages, FINRA should adopt a policy of *automatically referring the underlying conduct in every punitive damages case to its Enforcement department for regulatory investigation and potential disciplinary action*. If FINRA and its member firms cannot accept the full range of outcomes that a neutral arbitration process may produce — including punitive damages for truly reprehensible conduct — then FINRA should step aside and allow investors to pursue their claims in court, where such remedies are fully available. Instead, FINRA should fulfill its investor protection mandate that the *Securities Exchange Act requires and that the American public expects and deserves*.

## CONCLUSION

FINRA must reacquaint itself with its core statutory mandate under Section 15A(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o-3(b)(6)) and its own stated mission: to protect investors from misconduct by the securities industry, **not** to serve as the industry's lapdog. Many of the proposals in Regulatory Notice 26-06 would weaken investor protections, reduce accountability for serious misconduct, and further tilt the arbitration forum in favor of member firms. I strongly urge FINRA to reject these industry-friendly changes and reassess its approach so that it more faithfully fulfills its statutory obligations to protect the investing public. American investors expect and deserve nothing less.

Sincerely,



Daren A. Luma