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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 Process

Dear Ms. Mitchell:

I represent investors in FINRA arbitration—retirees, working families, and individual customers who lost savings to misconduct by FINRA-registered representatives and broker-dealers. My clients did not choose this forum. They were required to accept it in non-negotiable account agreements as a condition of investing. That compelled choice imposes a heightened duty on FINRA: the forum must actually protect the investors it forces through its doors.

Many of these proposals would benefit broker-dealers at the direct expense of the investing public, weaken procedural protections customers currently depend on, and shield industry members from accountability for the harm they cause. I urge FINRA to remain faithful to its statutory investor-protection mandate and reject the bulk of the proposals in Regulatory Notice 26-06. My specific comments follow.

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

FINRA must reject any rule that allows member firms to route claims or apply different procedures based on arbitrary, firm-controlled labels such as "complex," "'large," or "institutional" customer status. These categories are often artificial, and the labels are typically controlled by the firm itself.

Brokers routinely advise retail customers to invest in complex products and to hold them through single-member LLCs or trusts—pitched as estate planning, asset protection, or access to "elite" opportunities. Forming an LLC at a broker's recommendation does not make a customer sophisticated, and customers rarely understand that the entity their broker urged them to create may later be invoked to strip them of investor protections. Permitting firms to alter forum or procedure based on choices the firm itself recommended creates a perverse incentive: bad actors can engineer the form of a transaction to escape accountability for its substance.

The pre-dispute / post-dispute distinction is critical. Pre-dispute, customers do not negotiate brokerage agreements and do not open accounts based on procedural fine print governing a future arbitration they hope never to have; any "flexibility" written into account agreements will be drafted by firms and will favor firms. Post-dispute, when a claim has crystallized and the investor is represented by counsel familiar with the forum, parties can agree to procedural modifications without sacrificing fairness. The rule should be simple: no pre-dispute erosion of customer protections, but room for informed post-dispute agreement. The current system, in which every customer can access FINRA arbitration regardless of claim size or label, is the baseline of fairness and should not be eroded.

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

The current eligibility rule, properly interpreted, already accounts for ongoing fraud, continuing representation, and delayed discovery of harm. Its focus on the "occurrence or event" giving rise to the claim is a feature, not a bug. Long-term, illiquid products such as private placements, non-traded REITs, and annuities often do not reveal their true value for years because sponsors retain the ability to set, smooth, and mask Net Asset Values. The triggering "event" is frequently the eventual realization of loss, not the original purchase.

A strict statute of repose would reward bad actors who successfully conceal fraud. Many investor claims arise from continuing misconduct—long-tailed Ponzi schemes, falsified statements, and sustained misrepresentations—where the customer's first reasonable opportunity to discover harm comes years after the original transaction. Many states do not apply statutes of limitations to arbitration at all, treating it as equitable. Imposing rigid time bars at the FINRA level would create confusion, foreclose valid claims, and incentivize negligent supervision.

Expanding pre-hearing motion practice would compound the problem. FINRA's own guidance discourages pre-hearing dismissals, and the existing rule against motions to dismiss before the close of the claimant's case-in-chief is essential to keeping investor disputes on the merits. Broader dismissal authority would invite abusive motion practice, multiply cost and delay, and let firms use dispositive motions to stifle discovery. The reform that is actually needed is the opposite: FINRA should clarify that pleading standards in arbitration do not require court-style fact pleading, and should require that discovery be substantially complete before any motion to dismiss may be filed. I oppose any expansion of the timing or scope of pre-hearing motions.

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

I oppose FINRA's recent imposition of a four-year-degree and five-year-experience requirement for arbitrators, and I oppose any further tightening. These rules inexplicably exclude tens of millions of adults, shrink an already small pool, and increase reliance on a narrow group of repeat arbitrators whose backgrounds skew older and more industry-adjacent than the investing public.

FINRA arbitration is a substitute for the constitutional right to a jury trial. The arbitrator pool should resemble a jury pool. Jurors do not need degrees; many state and federal trial judges did not hold degrees when first admitted to the bar. It is indefensible that FINRA now imposes higher educational requirements on a part-time arbitrator than the Series 7 imposes on the broker

whose conduct that arbitrator will judge. The pool should be broadened—not narrowed—to anyone willing to complete the training and pass basic neutrality screening.

FINRA is required by statute to design rules "to protect investors and the public interest." 15 U.S.C. § 78o-3(b)(6). I therefore oppose any dilution of the "public arbitrator" definition. The current 20% professional-time threshold and the cooling-off periods are essential guardrails. People who spend significant portions of their careers representing industry interests develop industry-aligned worldviews; admitting "industry-lite" arbitrators to the public roster would erode the forum's legitimacy. The roster already unduly skews toward older, professional, industry-adjacent demographics. The fix is to recruit truly neutral candidates from a wider population, not to lower the bar for who counts as neutral.

Rule 12403(c)(1)(A), which permits a customer claimant to strike all non-public arbitrators from the chairperson list, must not be weakened. That rule was a hard-won correction to a regime that previously guaranteed industry representation on every panel. Reverting it would re-import the structural bias the rule was adopted to eliminate.

FINRA should, however, equalize strikes across the claimant side and the respondent side, regardless of how many separately represented parties appear on each. The current allocation gives a strikes advantage to whichever side is more fragmented—an outcome unrelated to the merits and easily manipulated through joinder strategy.

Arbitrator Training (Request for Comment E)

I support additional procedural training: ethics, hearing structure, the chairperson's role, ongoing education on FINRA rule changes, and training to reduce late arbitrator withdrawals. Training in the management of complex multi-party disputes, large document productions, and electronically stored information would benefit every participant in the forum.

Training must remain procedural, not substantive. I oppose training that ranks customer claims by importance or that addresses substantive legal doctrines or specific investment products. Every customer claim—whether the loss is a modest retirement account or a large trading account—deserves the same procedural rigor. Substantive training places FINRA's institutional thumb on the scale of cases the parties' advocates and expert witnesses are paid to develop on the record. FINRA's role is to provide a neutral forum, not to pre-condition arbitrators on contested questions of law or product mechanics.

Discovery (Request for Comment F)

The Discovery Guide is currently slanted toward respondents and is overdue for an update. The fundamental problem is not that FINRA lacks discovery rules—the Code already contains eight—but that those rules are under-enforced. Broker-dealers routinely respond to presumptively discoverable items with boilerplate objections, especially as to exception reports, commission runs, and electronic communications, and frequently invoke Gramm-Leach-Bliley in ways that misstate the statute's actual scope.

FINRA should clarify, by rule and by training, that boilerplate objections to presumptively discoverable items are sanctionable misconduct, and should encourage arbitrators to impose meaningful sanctions on repeat offenders. The Guide should expressly require

production of: complete compliance manuals for the relevant period; documents reflecting regulatory inquiries, investigations, or proceedings concerning the registered representative or the products at issue, including FINRA Rule 8210 requests, FINRA enforcement materials, and SEC Wells notices; and all communications relevant to the dispute or to the products and strategies at issue, including text messages, instant messages, and emails on personal and firm-issued devices. Mandatory production of these key categories, combined with swift sanctions for non-compliance, is the only way to make the Discovery Guide an effective rule. These are precisely the categories that are most probative and most resisted under the current Guide.

I oppose creating a "discovery referee" or any new administrative layer. Adding a position would risk a fresh vector of industry influence and would slow rather than streamline discovery. FINRA should also resist further restrictions on the scope of discovery. Access to relevant information is a right; broker-dealers are required by SEC rules to maintain books and records in readily accessible form, and any cost-based objection should require evidence of an actual, particularized burden, not generalized inconvenience.

Finally, the Guide should require production of insurance coverage information upon request. Disclosure of liability insurance is mandatory in federal court and nearly every state court system. Its absence from FINRA arbitration is indefensible: investors cannot rationally evaluate settlement, plan trial strategy, or assess collectability of a future award without it. The amendment should mandate production of policy declarations, the full policy, and any reservation-of-rights or declination correspondence.

Hearing Oversight and Efficiency (Request for Comment G)

FINRA should not create a centralized contact point for substantive interpretive guidance to arbitrators. Any such resource would, in practice, blur the line between administration and adjudication, and would create the appearance—if not the reality—that arbitrators are receiving guidance from the very organization that drafts the rules. The better path is to clarify existing arbitrator resources and improve procedural and evidentiary training.

No new case-management requirements are needed. The priority is enforcement of the timelines and rules already in place. Firms regularly miss discovery and scheduling obligations, and arbitrators are too often reluctant to impose meaningful consequences. Where benchmarks—such as the timely scheduling of an Initial Prehearing Conference or a final hearing—are missed, FINRA staff should automatically check in with the parties and the panel to offer administrative assistance, removing the burden on claimants to ask for help while preserving arbitrator independence on the merits.

On technology, FINRA should: develop a mobile application for counsel; overhaul billing so that invoices are issued promptly with a clear, itemized breakdown of every charge and the rule authorizing it; and modernize the DR Portal to display docket information clearly (closer to the federal PACER system), with filtering, dedicated filing types for common motions, and the ability to download a complete docket. These are practical improvements that benefit every participant without compromising arbitrator independence.

Punitive Damages (Request for Comment H)

FINRA must preserve arbitrators' authority to award punitive damages under the applicable state-law standards. Punitive damages are awarded in less than 1% of FINRA customer cases and serve the well-recognized functions of punishment and deterrence. The industry's current push to limit them is a reaction to a small number of high-profile awards in which arbitrators evidently found, on the record before them, that the conduct was egregious enough to warrant the remedy. The proper response to those awards is the existing judicial-review framework under the Federal Arbitration Act and state arbitration acts—not a wholesale reduction in arbitrator authority that would shield serious misconduct from consequences.

FINRA should not permit pre-dispute waivers, caps, or limitations on punitive damages. A waiver buried in an account-opening agreement is no choice at all; it is a Hobson's choice between investing and preserving a critical remedy. State and federal law already provide standards and constitutional limits on punitive damages, and the courts have well-developed doctrines for reviewing them. FINRA-specific caps would be redundant and would function in practice as a one-way ratchet against investors.

I likewise oppose new procedural hurdles—mandatory bifurcated hearings, mandatory explained decisions for punitive awards, or special arbitrator qualifications applicable only to cases in which punitive damages are sought. These measures would discourage rare but well-deserved awards, increase cost and delay, and single out one remedy—the remedy that disfavors firms—for special treatment. It is incoherent to suggest that arbitrators are competent to dismiss a customer's claim entirely or to enter an award against the customer, but are not competent to award punitive damages against a brokerage firm.

An internal FINRA appeals process directed at punitive damages, or arbitration awards more generally, would be a particularly serious mistake. The defining feature of arbitration is finality, and finality is the principal reason firms insist on FINRA arbitration as the exclusive forum for customer disputes. An appellate layer would eliminate that bargain while preserving every feature of arbitration that disadvantages investors relative to court—limited discovery, no jury, and limited merits review. It would also empower well-resourced firms to appeal as a matter of course and to pressure prevailing investors into discounted settlements. The Federal Arbitration Act and state law already provide vacatur for corruption, evident partiality, fraud, and arbitrator misconduct. That is sufficient.

Arbitration Awards Online (Request for Comment J)

The Arbitration Awards Online database is a critical resource for parties, counsel, regulators, journalists, academic researchers, and the public. It allows investors to research arbitrator track records, identify patterns of misconduct, and partially level the structural information asymmetry between repeat-player firms and one-shot customers. Its value depends on its breadth and on the fact that awards remain accessible after the case is closed.

FINRA should not permit removal or redaction of awards from AAO. Expungement is already overused, with high approval rates and limited adversarial opposition; layering an additional removal mechanism on top would create a memory hole that conceals patterns of

misconduct from the very investors most likely to need that information. Awards should remain public in their entirety.

FINRA should expand and improve AAO, not contract it. Specifically, FINRA should: convert awards into structured, searchable data with consistent metadata; integrate basic outcome analytics for grant rates, award amounts, and dispositions; cross-link awards to BrokerCheck profiles and to any subsequent court orders confirming or vacating the award; improve full-text search with relevance ranking, phrase searches, Boolean operators, and the ability to search within specific portions of an award; and provide formal API or bulk-data access on terms consistent with FINRA's existing permissions for investor-protection, academic, compliance, and regulatory uses. These improvements would make AAO equally useful to all parties, not merely accessible in form while remaining practically opaque to those without commercial analytics tools.

Unpaid Awards (Request for Comment K)

FINRA has failed for decades to address the unpaid-award problem in any meaningful way. As of 2024, approximately 25% of investor awards remain unpaid, and roughly 37 cents of every dollar awarded to a customer goes uncollected. Those numbers describe a persistent structural deficiency, not an isolated issue. A forum that produces unenforceable awards does not provide investor protection in any meaningful sense.

The most effective solution is a national investor recovery pool, administered by FINRA and funded by member firms. The resources plainly exist. In fact, in just the past ten months, FINRA has separately refunded approximately $50 million and $100 million in surplus assessments to its industry members. This action demonstrates that the resources are available; the political will to redirect them to investor protection must follow. An errors-and-omissions insurance requirement would provide additional, complementary protection. Empirical experience refutes the predicted access concerns: Oregon imposed a $1 million E&O requirement on investment advisers in 2018, and the number of state-registered advisers was substantially unchanged before and after; similar work in Oklahoma confirms that insurance mandates do not materially reduce access to advisory services.

FINRA should also pursue legislative reforms to address the bankruptcy discharge of unpaid customer awards and to strengthen point-of-contact disclosure of a firm's or representative's unpaid-award history. The frequently repeated "moral hazard" objection to insurance and recovery pools is unfounded. Bad actors do not commit fraud because a backstop exists; intentional misconduct is typically excluded from coverage, and a recovery pool can and should retain subrogation rights against the bad actor. The unpaid-award problem must be addressed regardless of the forum or the title of the financial professional, as a forum with unenforceable awards is fundamentally broken .

CONCLUSION

FINRA should ensure that any rule changes adopted in response to Notice 26-06 strengthen investor protection and the integrity of the markets, rather than placate its board or its industry members at the expense of its statutory mandate. The core principles of fairness, transparency, and acting in the customer's best interest must remain intact and must be upheld. I

appreciate the opportunity to comment and welcome the chance to comment on any future proposals.

Respectfully submitted,

Leo Peraza

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