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Polar Investment Counsel Inc.
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April 30, 2026

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

Re: Regulatory Notice 26-06 – Request for Comment on Modernizing FINRA Arbitration Rules, Guidance and Processes

Dear Ms. Mitchell:

The opportunity to respond to RN 26-06 regarding modernization and improving the FINRA arbitration process is appreciated. While FINRA arbitration presents the opportunity for disputes to be handled in a manner that may be more efficient and more quickly than the same dispute might be handled under the court system, as the process has progressed over several years, issues have arisen that effect small firms such as ours. FINRA's arbitration framework must remain workable for firms of all sizes. Reforms that increase cost, complexity, or unpredictability have a materially greater impact on small firms and, by extension, on market access and competition.

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1. Assertion: "FINRA arbitration is structurally biased against customers."
Small Firm Perspective:

The SEC's **Study on Investment Advisers and Broker-Dealers (Jan. 2011)** did not conclude that arbitration is inherently biased against investors. From a small firm perspective, the more pressing concern is not bias, but **unpredictability and variability in outcomes**, which create operational and financial uncertainty.

Small firms lack the ability to absorb inconsistent arbitration outcomes across a portfolio of cases. Even a small number of unexpected awards can have a material impact on capital, insurance costs, and business continuity. Reform should prioritize **consistency and rule-based adjudication**, not further directional adjustments.

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2. Assertion: "Industry arbitrators introduce bias and should not be reinstated."
Small Firm Perspective:

The removal of industry arbitrators (see **SR–FINRA–2007–021; Exchange Act Release No. 34-56119 (2007)** and **Release No. 34-57456 (2008)**) was intended to address perception concerns. However, small firms are disproportionately affected by the resulting **loss of subject-matter expertise** on panels.

Large firms may mitigate this through extensive expert testimony and legal resources. Small firms often cannot.

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As a result:

- Panels may (and many times do) misunderstand supervisory systems,
- Legitimate compliance frameworks may be mischaracterized, and
- Outcomes may diverge from FINRA rules.

Restoring access to industry expertise—or a functional equivalent—is essential to ensuring that small firms are evaluated under the same regulatory standards they are required to follow. The requirement that a FINRA member associated person be present on all panels should be required.

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3. Assertion: "Expanding motions to dismiss would harm investors."
Small Firm Perspective:

The current limitations on dispositive motions (see FINRA Regulatory Notice 12-11) require firms to fully litigate claims regardless of merit.

For small firms, this creates a significant burden:

- Legal costs are front-loaded,
- Insurance deductibles are triggered, and
- Management resources are diverted from core business operations.

A narrowly tailored expansion of dispositive motion practice would:

- Allow early resolution of legally deficient claims,
- Reduce unnecessary cost exposure, and
- Improve overall system efficiency.

This is a matter of **economic viability**, not procedural advantage.

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4. Assertion: "Discovery should be expanded to protect investors."
Small Firm Perspective:

The FINRA Discovery Guide (approved in **Exchange Act Release No. 34-51856 (2005)**) reflects a deliberate balance between access and efficiency.

For small firms, expanded discovery presents acute challenges:

- Limited internal compliance and legal staff,
- Higher relative costs of document production,
- Greater disruption to business operations.

Discovery expansion disproportionately impacts small firms without necessarily improving case outcomes. A **proportional, Guide-based approach** is essential.

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5. Assertion: "Expungement should be further restricted."
Small Firm Perspective:

The SEC-approved expungement reforms (**SR–FINRA–2017–042; Exchange Act Release No. 34-88716 (2020)**) significantly increased procedural rigor.

For small firms and their associated persons, expungement is often the only mechanism to correct **factually inaccurate or misleading disclosures** that can:

- Damage reputations,
- Impair client relationships, and
- Limit future employment opportunities.

Further restriction would disproportionately harm individuals at smaller firms, who lack the brand and institutional support available at larger firms. Costs of the expungement process are inordinately high and this should be addressed by FINRA.

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6. Assertion: "Arbitration costs primarily burden claimants."
Small Firm Perspective:

Cost pressures are particularly acute for small firms. Unlike large firms, small firms cannot spread litigation costs across a broad revenue base.

SEC-approved fee structures (e.g., **SR–FINRA–2014–049; Exchange Act Release No. 34-74503 (2015)**) apply uniformly, but their impact is not uniform.

For small firms:

- A single arbitration can materially affect annual profitability,
- Repeated claims can threaten viability, and
- Insurance costs are highly sensitive to claims activity.
- A single arbitration can devastate or cause closure of a small firm

Cost reform must consider **relative impact**, not just absolute cost.

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7. Assertion: "Customers require additional procedural advantages due to unequal representation."
Small Firm Perspective:

Small firms often operate with:

- Limited in-house legal resources,
- Reliance on external counsel, and
- Significant cost sensitivity in defense strategy.

In many cases, the disparity in resources is not as one-sided as assumed. Further procedural tilting risks creating **systemic imbalance**, particularly in cases involving smaller respondents.

Targeted support for pro se claimants is appropriate. Structural asymmetry is not.

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8. Assertion: "Arbitration outcomes demonstrate systemic unfairness."
Small Firm Perspective:

From a small firm standpoint, the central issue is not directional bias, but **lack of predictability**.
Unpredictable outcomes:

- Complicate risk management,
- Increase insurance premiums, and
- Discourage smaller firms from offering certain products or services.

The SEC's regulatory framework emphasizes **fair process**, not outcome engineering. Small firms depend on **consistent application of rules** to operate effectively. Arbitrators required by oath and training to consider FINRA, SEC and/or state regulations when determining a case would be a start to gain some predictability of outcome.

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9. Assertion: "Reforms should consider customer win rates."
Small Firm Perspective:

Win rates do not capture:

- Claim merit,
- Settled cases,
- Case complexity, or
- Variability in evidence.

Small firms require a system that is:

- Predictable,
- Transparent, and
- Grounded in FINRA rules.

Outcome-based metrics do not provide a reliable basis for reform.

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11. Assertion: "Equitable outcomes should take precedence over rule-based analysis."
Small Firm Perspective:

Small firms structure their compliance programs around FINRA rules approved by the SEC. If arbitration outcomes are not anchored in those same rules, firms cannot reliably manage regulatory risk.

This creates a fundamental disconnect between:

- Compliance obligations, and
- Adjudicative outcomes.

For small firms, this disconnect is particularly acute because they lack the resources to absorb or adapt to inconsistent interpretations. Introduction of an Associated Person to the panel would assist in the understanding of the other two panelists of the structure of FINRA, the supervisory system and the applicable regulations or rules.

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12. Assertion: "Further claimant-oriented reforms are needed to restore confidence."
Small Firm Perspective:

Confidence in the arbitration forum depends on:

- Competent decision-making,
- Consistent application of rules,
- Reasoned awards, and
- Manageable cost structures.

These are structural issues that affect all participants. Reforms that increase cost or unpredictability will disproportionately impact small firms and may reduce their ability to serve clients. If panelists misled by either the claimant or respond attorney, the panelists do not have the necessary background or familiarity with the pertinent regulations and regulatory framework to realize they are being misled. An Associated Person on the panel would be a valuable asset in assisting the other panelists if non-factual, untrue assertions are made in regard to regulations or regulatory structure.

Summary

From a small firm perspective, the primary challenges in FINRA arbitration are:

- **Unpredictability of outcomes,**
- **Rising and disproportionate cost burdens,**
- **Loss of subject-matter expertise in decision-making**, and
- **Structural inefficiencies that scale poorly for smaller organizations.**
- **Need to require an Associated person be on each three person panel**

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The SEC's rule approval history and FINRA's own reforms support a framework focused on **consistency, proportionality, and regulatory alignment**—not further procedural asymmetry.

Reform under FINRA Regulatory Notice 26-06 should reflect these priorities to ensure that the arbitration forum remains viable for firms of all sizes.

Respectfully,

Sherry Abbott
President
Polar Investment Counsel, Inc. CRD 42847