April, 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 Process

Dear Ms. Mitchell:

Stoltmann Law Offices has represented thousands of investment fraud victims in FINRA arbitration – and NASD arbitration before that – including victims of misconduct committed by FINRA registered representatives and Broker-Dealers. I write on behalf of Stoltmann Law Offices, to urge FINRA to stay faithful to its stated mission of investor protection and reject the recommendations provided in FINRA Regulatory Notice 26-06. Many of these proposed recommendations involve changes to FINRA's arbitration rules to explicitly benefit Broker-Dealers at the expense of the investing public. These changes would betray FINRA's investor protection mission and allow the securities industry to escape accountability for damages created by industry members.

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

Proposals to differentiate procedural requirements or even allow FINRA member firms to select alternative arbitration forums to FINRA based on whether a claim is "complex" or "large" or the claimant is an "institutional" or "retail" investor are fundamentally flawed and dangerous. The distinction between these categories is often artificial and controlled by the FINRA member firm itself. Retail customers are frequently advised by their brokers to invest in the complex products or strategies at issue or to establish corporate entities or trusts to invest, ostensibly for estate planning or asset protection, or to access supposedly "elite" complex products. However, forming a single-member LLC does not alter the customer's actual sophistication or their reliance on the broker's advice. Crucially, customers are often unaware that this structural change may strip them of critical regulatory protections. Allowing rules to differentiate or allowing FINRA member firms to select alternative arbitration forums with fewer or no protections based on decisions made by the very FINRA member involved creates a perverse incentive for bad actors to exculpate themselves from misconduct. This would serve to lower the bar on investor protection.

Furthermore, FINRA should consider the critical distinction between pre-dispute and post-dispute variances. Pre-dispute variances inevitably lead to boilerplate contracts dictated by firms that favor the firm's interests, as customers lack the leverage or knowledge to negotiate these terms.

Conversely, allowing parties to manage the administration of their case post-dispute, when the customer is likely represented by counsel familiar with the process, poses less risk to the customer and allows for necessary customization. Allowing customers to unilaterally choose between arbitration and litigation post-dispute aligns with FINRA's obligation to protect investors. Allowing certain claims into industry hand-selected alternative arbitration forums would clearly not increase fairness for the customer; it would shift the venue to one where the power imbalance is even more pronounced. The current system, where customers can access FINRA arbitration regardless of the claim's nature, provides a necessary baseline of protection that would be eroded by such exclusions.

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

The current practice of allowing eligibility motions to dismiss potentially forces investors back into court years after filing, restarting their litigation from scratch and creating significant inefficiency. This is particularly problematic for long-term, illiquid products like private placements, alternative investments like non-traded REITs, and annuities, where the true value of the investment may not be revealed for years due to sponsors' ability to set and artificially mask Net Asset Values (NAV). In these cases, the "event" triggering the claim may be the realization of a massive loss years after the initial purchase, a nuance that rigid time bars might fail to capture. Furthermore, many states do not apply statutes of limitations to arbitration, viewing them as equitable proceedings. FINRA's rules already empower arbitrators to interpret and apply the Code, and introducing statutory limitations would create confusion and inconsistency. Interpreted correctly, the current eligibility rule, which focuses on the "occurrence or event" within six years, is flexible enough to account for ongoing fraud, continuing representation, and the delayed discovery of harm inherent in complex financial products.

The eligibility rule should not be amended to create a strict statute of repose. Such a rule would incentivize negligent supervision and reward bad actors who conceal fraud for extended periods. Many claims involve ongoing misconduct, such as long-tailed Ponzi schemes or continuous fraudulent account statements, where the harm is not discovered until years later. The current rule recognizes that investors interact with advisors continuously and may not be aware of harm due to the advisor's deception or the firm's failure to supervise. Tying the eligibility period strictly to the date of a securities transaction also ignores the reality that the claim often arises from subsequent fraudulent acts, such as the creation of fake statements or values to hide losses or other misrepresentations. The flexibility of the current rule allows arbitrators to analyze specific fact patterns, whereas a rigid statute of repose would potentially bar valid claims and undermine investor protection.

Providing the industry with additional methods to dismiss cases would only increase abusive motion practice and prevent customers from having their cases heard on the merits. FINRA's own guidance discourages pre-hearing dismissals. Instead of adding more hurdles, FINRA should clarify that pleading standards in arbitration do not require court-style detail and should require discovery to be completed before motions to dismiss can be filed. This would ensure panels have a complete record to evaluate eligibility claims, preventing firms from using early motions to stifle discovery and delay justice. I do not support expanded changes to the timing or circumstances for prehearing motions to dismiss. The current framework, which discourages such

motions prior to the conclusion of a party's case-in-chief, is essential for fairness to 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 – adults without a bachelor's degree. Further increasing minimum qualification requirements would artificially shrink the pool and increase reliance on repeat arbitrators. This move potentially creates an industry-tilted panel that is less representative of the investing public. FINRA arbitration exists as a substitute for the right to a jury trial. Therefore, the arbitrator pool should resemble a jury pool as closely as possible. Members of juries do not require specific subject matter expertise, nor do many judges. The new rules make becoming a part-time arbitrator more difficult than becoming a Series 7 licensed financial advisor, which requires no degree. The pool should be broadened to include anyone who has invested with a FINRA member and can complete the training, ensuring an arbitrator pool that is more like a jury of peers.

FINRA is required to have rules that are “designed . . . in general, to protect investors and the public interest.” 15 U.S.C. § 78o-3(b)(6). I oppose amendments to the definition of "public arbitrator" that dilute the independence criteria. The current disqualification criteria, such as the 20% professional time threshold and cooling-off periods, are essential guardrails. Individuals who spend a significant portion of their careers representing industry interests may develop a "defense-side" worldview. Expanding the roster to include "Industry-Lite" arbitrators would erode the legitimacy of the forum. The pool already skews toward an older, professional demographic. FINRA should focus on recruiting truly neutral professionals rather than lowering standards.

Rule 12403(c)(1)(A), which allows parties to strike all non-public arbitrators, should not be amended. This rule was a landmark victory for investor protection, addressing the systemic bias of the Rules previously requiring an industry representative on every arbitration panel. Reverting this rule would undermine the neutrality of arbitration panels and contravene FINRA’s goal of investor protection.

FINRA should amend its rules to allow all claimants collectively and all respondents collectively to share the same number of strikes. This ensures that one side does not have an unfair advantage due to the number of separately represented parties. As long as the rule applies equally to both sides, it promotes impartiality.

Arbitrator Training (Requests for Comment E)

I support additional procedural training, such as refresher courses on ethics, hearing structure, and the role of the chairperson. Continuing education on FINRA rule changes and training to prevent late withdrawals would also be beneficial. However, this arbitrator training must remain focused on *procedure*, not substance. I oppose training that creates a hierarchy of customer claims, implying some are more important than others. All cases, whether involving a small retirement nest egg or a large trading account, deserve equal respect and dignity. Any

additional training should focus on managing complex multi-party disputes or extensive document production, not on substantive legal distinctions or investment products. Such Training on elements of laws or complex investment products undermines FINRA's neutrality and risks putting a "thumb on the scale" regarding legal interpretations. Substantive issues should be left to argument by the parties' advocates and testimony of expert witnesses.

Discovery (Requests for Comment F)

The Discovery Guide is currently slanted in favor of respondents and must be amended to reflect the reality of the 2026 securities industry. While the Guide was a step forward from "adjudication by ambush," it is now outdated. Broker-dealers routinely abuse the process with boilerplate objections, particularly regarding exception reports and commission runs, often citing the Gramm-Leach-Bliley Act incorrectly. FINRA must enforce the Guide more strictly, clarifying that objections to presumptively discoverable items are sanctionable misconduct. The Guide should be updated to mandate the production of entire compliance manuals, regulatory investigation documents (including FINRA 8210 requests and SEC Wells notices), and all communications including texts and emails relevant to the dispute and the products and strategy at issue which are frequently internal firm documents key to a fair process and search for the truth.

I oppose creating a new "discovery referee" or additional layer of bureaucracy. FINRA already has a robust code of arbitration procedure with eight rules dedicated to discovery. The problem is not a lack of rules but a lack of enforcement. FINRA should focus on training arbitrators to enforce existing rules, discourage boilerplate objections to the Discovery Guide, and sanctioning repeat violators rather than creating new administrative roles that could introduce industry bias.

FINRA must resist imposing further limitations on discovery. Access to potentially relevant information is a right, not a mere desire. Broker-dealers are required by SEC rules to maintain records in a readily available format, and cost objections should require evidence of an actual unreasonable burden.

The Discovery Guide must be amended to require the production of insurance coverage information upon request. In all federal courts and nearly all states, liability insurance disclosure is mandatory. The lack of this disclosure in FINRA arbitration is fundamentally unfair, as it prevents investors from assessing the collectability of an award and planning their strategy. The proposed amendment should require the production of policy declarations, the full policy, and any declination letters.

Hearing Oversight and Efficiency (Requests for Comment G)

FINRA should not create a central contact point to provide interpretive guidance. Such a resource risks arbitrators relying on FINRA staff for legal interpretations, blurring the line between administration and adjudication. Instead, FINRA should improve the clarity of existing resources and enhance training on procedural and evidentiary issues.

No new case management requirements are needed. The priority should be enforcing existing timelines and rules. Firms frequently fail to comply with discovery obligations, and

arbitrators are often reluctant to impose meaningful sanctions. Strengthening enforcement mechanisms is more effective than creating new deadlines. If procedural benchmarks (like the scheduling of an Initial Prehearing Conference or final hearing) are not met, FINRA staff should automatically check in with the parties and panel to offer administrative assistance. This removes the pressure on parties to request help and ensures timely resolution without compromising arbitrator independence.

FINRA should develop a mobile app for counsel, improve billing integration to issue invoices promptly, and update the DR Portal to display docket information more clearly (similar to PACER) including filtering portal filings. The portal should also include specific filing types for common motions.

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 1% of cases and serve the critical functions of punishment and deterrence. The industry's push to limit them is a reaction to a few high-profile cases in which the arbitrators clearly found justification for punitive damages based on outrageous conduct by the industry. Stripping arbitrators of the power to award punitive damages would shield serious misconduct from consequences and directly counter FINRA's investor protection mandate.

FINRA should not permit pre-dispute agreements that limit or preclude punitive damages. Such provisions would create a *Hobson's choice* for investors, forcing them to forfeit a critical remedy. This would create a perverse incentive for firms to engage in egregious misconduct, knowing they cannot be held accountable for punitive damages.

No caps on punitive damages should be imposed. State and federal laws already provide adequate safeguards and standards for awarding punitive damages. Creating separate FINRA standards would be redundant and unnecessary. I oppose additional procedural hurdles regarding punitive damages, such as bifurcated hearings or mandatory explained decisions. These would discourage arbitrators from awarding these rarely imposed damages and increase costs and delay resolution without adding meaningful protection, as state laws already impose standards for awarding punitive damages. Further, it is absurd to suggest that arbitrators are qualified to entirely dismiss a Claimant's case or even award damages against the Claimant in favor of the brokerage firm but the same arbitrator cannot be qualified to issue an award punitive damages against the brokerage firm. No additional or special qualifications are needed for issuing punitive damages awards.

I also strongly oppose an appeal process specifically for punitive damages. The Federal Arbitration Act and state laws already provide remedies for vacating awards due to corruption, fraud, or arbitrator misconduct. Creating a special appeals process for punitive damages would undermine the finality of arbitration and unfairly target outcomes unfavorable to firms.

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 research arbitrator track records, identify patterns of misconduct, and level the information asymmetry between repeat-player firms and one-shot investors.

FINRA should not amend its rules to permit the removal or redaction of awards from AAO. Transparency is essential for investor protection and regulatory oversight. The expungement process is flawed, with high approval rates and low opposition, and removing awards from AAO would create a "memory hole" that hides patterns of misconduct. Entire awards should remain public.

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 dollar uncollected. Stoltmann Law Offices has its own "unpaid awards" for victims of investment fraud and abuse. 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. This solution is clearly feasible since FINRA has recently 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

I encourage FINRA to ensure that any changes to their rules prioritize and strengthen investor protection and the integrity of the markets. FINRA should not make changes to placate its board or industry members at the expense of its mandated goal of investor protection. The core principles of fairness, transparency, and acting in the customer's best interest must remain intact and be upheld.

Filed on Behalf of Stoltmann Law Offices, P.C.

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