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May 1, 2026

Via Email: pubcom@finra.org

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

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

Dear Ms. Mitchell:

I have been practicing securities law for 38 years and represented numerous investors in FINRA arbitration. I submit this comment in strong opposition to the proposals set forth in FINRA Regulatory Notice 26-06. I represent investors nationwide in securities arbitration and litigation, and I have witnessed firsthand how the FINRA forum operates as a substitute for the constitutional right to a jury trial.

The proposals under consideration do not “modernize” arbitration—they systematically erode investor rights, tilt the forum toward industry participants, and threaten to further undermine public confidence in the financial services industry.

I. THE PROPOSAL THREATENS CONFIDENCE IN U.S. MARKETS

FINRA’s stated mission is to protect investors and ensure confidence in capital markets. Yet the trajectory of these proposals does the opposite.

Public confidence in financial markets depends not only on performance, but on fairness, accountability, and access to justice. Investor protection failures—particularly in dispute resolution—directly erode trust in the system.

The investing public already understands:

- They are forced into arbitration
- They win much less frequently than the industry
- Even when they win, average awards are small and awards often go unpaid. ¹
- FINRA has chosen to refund some profits back to member firms, rather than fund unpaid awards in a forum force upon by the financial industry via contract. ²

Against that backdrop, Regulatory Notice 26-06 proposes further restricting investor rights. This is not reform—it is regression.

II. CURTAILING ACCESS TO COURTS UNDERMINES FUNDAMENTAL RIGHTS

At its core, this proposal raises a constitutional concern: Investors are being stripped of rights they would otherwise enjoy in a court of law before a jury.

The FINRA arbitration system exists only because investors are compelled into it through predispute arbitration clauses. These clauses already deprive investors of full discovery, meaningful appellate review, and jury determination of claims.

Regulatory Notice 26-06 moves even further in that direction by:

- Allowing forum selection carve-outs
- Expanding dismissal mechanisms before a full hearing
- Potentially limiting claims based on size, complexity, or classification

This is not neutral reform at all. It is a systematic narrowing of access to justice.

III. “CHERRY PICKING” CLAIMS DESTROYS FAIRNESS

One of the most troubling aspects of the proposal is the suggestion that certain claims may be diverted away from FINRA arbitration or subject to different rules. This creates an unacceptable framework where the financial industry can effectively “cherry pick” which disputes are heard in investor-protective forums—and which are not.

Investors are frequently steered into complex products by brokers. Customers are often structured into entities by the very firms that later seek to reclassify them. These distinctions are manufactured and controlled by the industry itself.

¹ A 2013 American Bar Association study found the median recovery in a “customer win” was 37% of the sought amount. The most recent official data shows that in 2025, customer claimants were awarded damages in 30% of cases decided after a final hearing. This reflects a slight improvement from the 26% win rate recorded in 2024.

² <https://www.msn.com/en-us/money/markets/brokerage-regulator-plans-to-rebate-100-million-to-member-firms-investor-advocates-call-it-parody-of-justice/ar-AA1Zul3G?ocid=finance-verthp-feeds&apiversion=v2&domshim=1&noservercache=1&noservertelemetry=1&batchservertelemetry=1&renderwebcomponents=1&wcseo=1>

Allowing firms to leverage those distinctions to alter dispute rights creates perverse incentives, forum manipulation, and reduced accountability.

IV. EXPANDING DISMISSALS AND LIMITATIONS REWARDS MISCONDUCT

The proposal's discussion of expanded motions to dismiss and stricter eligibility frameworks would disproportionately harm investors.

Many securities frauds are long-tail in nature. Losses are often concealed for years, and complex products obscure true value.

Rigid limitations and early dismissals would reward concealment, incentivize delayed disclosure, and prevent claims from ever being heard on the merits.

V. THE CURRENT SYSTEM IS ALREADY STACKED AGAINST INVESTORS

Before weakening protections further, regulators must confront reality.

Investors prevail in a minority of arbitration awards, and a significant percentage of awards go unpaid.

Against that backdrop, the proposals do not balance the system—they exacerbate existing inequities.

VI. THESE PROPOSALS SIGNAL REGULATORY CAPTURE

The scope and direction of Regulatory Notice 26-06 mirror longstanding industry demands.

Adopting them now sends a dangerous signal: that FINRA on behalf of its membership, the financial services industry, is prioritizing industry convenience over investor protection.

VII. THE SEC SHOULD REJECT THIS PROPOSAL

If FINRA proceeds down this path, it will accelerate a crisis of confidence in the financial system.

The SEC must reject any rulemaking that limits investor access to fair dispute resolution and ensure that FINRA adheres to its statutory obligation to protect investors. Or, the SEC should support scrapping the entire FINRA arbitration system and allow American investors to go back to Court, where they sought help prior to 1987.

VIII. CONGRESS MUST ACT – ARBITRATION FAIRNESS ACT

If FINRA believes that some claims should go to court and others should remain in arbitration, then the issue is legislative.

Congress—not FINRA—must decide whether Americans should be forced to waive their constitutional rights.

The appropriate response is passage of the Arbitration Fairness Act and the SEC should ask Congress to pass new legislation.

CONCLUSION

Regulatory Notice 26-06 is not a neutral modernization effort. It is a fundamental restructuring of investor rights in favor of the financial industry.

If adopted, it will further erode investor protections, reduce accountability for misconduct, and undermine confidence in U.S. capital markets.

The SEC's stated mission is: "Since our founding in 1934 at the height of the Great Depression, we have stayed true to our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Our mission requires tireless commitment and unique expertise from our staff of dedicated public servants who care deeply about protecting the investing public and others who rely on our markets to secure their financial futures." This proposal is the antithesis of the SEC's Mission Statement. <https://www.sec.gov/about/mission>

FINRA should withdraw this proposal in its entirety. Right now, the FINRA arbitration system, while far from perfect, has reached at least a modicum of fairness for arbitration. The new proposal guts that modicum fairness.

Respectfully submitted,

Jeffrey Sonn
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