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April 30, 2026

Re: Regalatory Notice 26-06

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 am an attorney who has regularly represented investment fraud victims in Court and in FINRA arbitrations over the past forty+ years., I urge FINRA to stay faithful to its stated mission of investor protection and reject the vast bulk of 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 allowbroker-dealers and Associated Persons to escape accountability for damages created by industry members.

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

Proposals to differentiate procedural requirements should also allow public customers to choose alternative arbitration forums to FINRA.

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 merely 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))

ROUND HOLE SQUARE PEG!!! Procrustes would be proud!! 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.

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)

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.

Cookie cutter "discovery referee" may impose additional layer of bureaucracy. Why are tax returns relevant in an unauthorized trading claim? Let Arbitrators have some discetion, but provide the Guidance. 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 function of deterrence and punishment. 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 appeals 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.

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.

FINRA should enhance AAO by converting awards into structured, searchable data, integrating outcome analytics, linking awards to court actions and BrokerCheck profiles, and improving full-text search capabilities.

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. 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 which is clearly feasible since FINRA has separately 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 would prioritize the strengthening of investor protection and integrity of the markets. FINRA should not make changes to placate its board or industry members as 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.

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Sincerely,

Howard M. Rosenfield

Enc.: