



April 30, 2026

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

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

Dear Ms. Mitchell:

The American Securities Association¹ (ASA) appreciates the opportunity to comment on FINRA Regulatory Notice 26-06 regarding modernizing FINRA's arbitration rules, guidance, and processes. ASA represents the retail and institutional capital markets interests of American financial services firms.

ASA submits the following comments based on the concerns and recommendations of our member firms. The FINRA arbitration system, while long-established, is widely perceived by our members as functioning ineffectively in several critical respects. We urge FINRA to implement meaningful reforms to restore confidence in the fairness, transparency, and efficiency of the arbitration system.

I. Introduction: The Value of a Well-Functioning Arbitration System.

FINRA's arbitration system, when operating as originally intended, can be a valuable tool for both broker-dealer customers and FINRA members because it offers a faster, more practical way to resolve disputes than traditional court litigation. It was designed to provide customers with a streamlined, lower-cost venue overseen by neutral decision-makers who understand the securities industry and its regulatory framework. When arbitration functions properly, it reduces the time, expense, and uncertainty associated with civil litigation while still protecting customers' rights and ensuring that legitimate grievances are fairly heard and resolved.

Over time, however, the system has drifted away from those principles. The current structure has become confusing, expensive, and increasingly driven by decision-makers who often lack current industry experience. The result is unpredictable outcomes, disproportionate fee awards, and mounting procedural burdens. Restoring that balance requires fundamentally reforming how arbitrators are selected and retained. Firms increasingly view FINRA arbitration as carrying asymmetric risk, with panels awarding recovery based on sympathy or perceived 'deep pockets' rather than any demonstrated violation of law or regulation.

¹ ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





The recommendations outlined below are intended to make certain that arbitration outcomes are grounded in law, expertise, and consistent procedures.

II. Conflicts of Interest Undermining FINRA Arbitration.

Concerns have been raised about the influence of private advocacy groups with a direct financial stake in FINRA arbitration proceedings. Chief among these groups is the Public Investors Advocate Bar Association (PIABA), a trade association founded in 1990 by lawyers representing investors in securities arbitrations against firms and brokers.²

Since 1999, PIABA has enjoyed a degree of access to FINRA that no other advocacy group can match.³ FINRA's own website hosts an investor alert co-authored by FINRA staff and the PIABA Foundation, directing investors to contact PIABA to find an attorney, and noting that many of its attorneys work on a contingent fee basis.⁴ That collaboration reflects a broader and more consequential institutional relationship exists.

PIABA has consistently supported, and FINRA has repeatedly adopted, structural rules that maximize filing leverage, reputational harm, and settlement pressure on firms and associated persons, while opposing protections to screen out meritless or time-barred claims, ensure fair decisions, or provide meaningful review of flawed awards.⁵ This has raised serious questions about regulatory capture and whether FINRA can administer its arbitration system impartially.⁶

These concerns are deepened by PIABA's formal role in FINRA's governance. PIABA members have held seats on FINRA's Dispute Resolution Task Force, which was charged with redesigning core

² <https://piaba.org/membership-benefits/> PIABA Membership Eligibility Requirements, Member Registration, PIABA.org, available at <https://piaba.org/member-registration/> (requiring attorneys to “devote at least 80% of their securities practice, both individually and at the firm level, to representing investor-customers”); <https://www.advisorhub.com/plaintiffs-lawyers-group-piaba-taking-arbitration-out-of-its-name/>

³ *FINRA Statement on PIABA's Arbitrator Report*, FINRA (2014), <https://www.finra.org/media-center/news-releases/2014/finra-statement-piabas-arbitrator-report> (FINRA has acknowledged working closely with PIABA since 1999 on arbitrator recruitment, supplying PIABA with arbitrator application forms for more than 15 years, maintaining a link from PIABA's website to FINRA's arbitrator application pages for more than a decade, and attending PIABA's Annual Meetings to recruit arbitrators.)

⁴ FINRA, *Securities Arbitration — Should You Hire an Attorney?*, FINRA.org, available at <https://www.finra.org/investors/insights/securities-arbitration> (noting that PIABA attorneys “specialize in representing investors in securities arbitrations” and that “[m]any attorneys who specialize in representing investors in securities arbitrations do so on a contingent fee basis,” meaning “the attorney is willing to advance their time with the hope and expectation of recovering money from the investment firm”)

⁵ *Do FINRA's Proposed MAP Rules Put PIABA's Concern Over Money Ahead of Fairness to Members?*, Broker-Dealer Law Corner (Mar. 2018), <https://www.bdlawcorner.com/2018/03/do-finras-proposed-map-rules-put-piabas-concern-over-money-ahead-of-fairness-to-members/>; *PIABA Challenges Finance Association Over FINRA Arbitration Damages*, ICLG (Aug. 6, 2025), <https://iclg.com/news/22922-piaba-challenges-finance-association-over-finra-arbitration-damages>; *PIABA Comment Letter in Response to SIFMA Recommendations*, PIABA (Aug. 4, 2025), <https://piaba.org/comment-letter-response-to-sifma-recommendations-for-finra-arbitration/>; *Decision & Award*, FINRA, <https://www.finra.org/arbitration-mediation/about/arbitration-process/decision-award>; *FINRA Arbitration Guide: What Financial Advisors Need to Know*, HLBS Law, <https://hlbslaw.com/finra-arbitration-guide/>

⁶ *The Disturbingly Cozy Relationship Between FINRA and PIABA*, Broker-Dealer Law Corner (Jan. 9, 2019), <https://www.bdlawcorner.com/2019/01/the-disturbingly-cozy-relationship-between-finra-and-piaba/>





arbitration rules⁷ and PIABA maintains representation on FINRA's National Arbitration and Mediation Committee (NAMC), which recommends arbitration rule changes to the Board.⁸

The correlation between PIABA's advocacy positions and FINRA's adopted rules is both consistent and striking. FINRA has adopted nearly every significant rule change PIABA advocated for, including the elimination of industry-member arbitrators and curtailment of motions to dismiss.⁹ The result is an arbitration system shaped, in large part, by an organization with a direct financial interest in its design.

The connection between rule design and financial incentive is straightforward: every rule change that increases claim volume, loosens dismissal standards, expands damage exposure, or restricts firms' procedural rights translates directly into greater revenue for PIABA's membership.

FINRA should address this structural conflict so that the arbitration reforms it is exploring in this regulatory notice are grounded in fairness, predictability, and integrity for all participants, rather than in the financial interests of a politically connected special interest group.¹⁰

⁷ Final Report and Recommendations of the FINRA Dispute Resolution Task Force (Dec. 2015), available at <https://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf> (PIABA members participated in the Task Force and PIABA studies and positions are cited throughout; see also FINRA, Statement on PIABA's Arbitrator Report (Oct. 2014) ("In July, FINRA formed an Arbitrator Task Force made up of a diverse group of individuals, and on which PIABA has strong representation"), available at <http://www.finra.org/newsroom/2014/finra-statement-piabas-arbitrator-report> (archived at <https://mondovisione.com/news/finra-statement-on-piabas-arbitrator-report-2014107/>).

⁸ <https://www.finra.org/rules-guidance/notices/26-06#notice>; PIABA, FINRA Governance Review: Public Governors Should Protect the Public Interest (Nov. 15, 2017), available at <https://piaba.org/report-finra-governance-review-public-governors-should-protect-public-interest/> ("FINRA has appointed a majority of investor advocates as public representatives on its National Arbitration and Mediation Committee (NAMC)," which "recommends changes to the rules governing the dispute resolution system"); see also PIABA Attorney Directory, biography of Jenice L. Malecki, available at <https://piaba.org/find-an-attorney/> ("Ms. Malecki was on FINRA's National Arbitration and Mediation Committee & the Board of PIABA").

⁹ The Disturbingly Cozy Relationship Between FINRA and PIABA, Broker-Dealer Law Corner (Jan. 9, 2019), Do FINRA's Proposed MAP Rules Put PIABA's Concern Over Money Ahead of Fairness to Members?, Broker-Dealer Law Corner (Mar. 2018), <https://www.bdlawcorner.com/2018/03/do-finras-proposed-map-rules-put-piabas-concern-over-money-ahead-of-fairness-to-members/>; PIABA Challenges Finance Association Over FINRA Arbitration Damages, ICLG (Aug. 6, 2025), <https://iclg.com/news/22922-piaba-challenges-finance-association-over-finra-arbitration-damages>; PIABA Comment Letter in Response to SIFMA Recommendations, PIABA (Aug. 4, 2025), <https://piaba.org/comment-letter-response-to-sifma-recommendations-for-finra-arbitration/>; Decision & Award, FINRA, <https://www.finra.org/arbitration-mediation/about/arbitration-process/decision-award>; FINRA Arbitration Guide: What Financial Advisors Need to Know, HLBS Law, <https://hlbslaw.com/finra-arbitration-guide/>; See also FINRA 2018 Budget Summary (reporting that 88% of FINRA's operating revenues derive from member firms through "Regulatory Fees" — defined to "primarily include the Gross Income Assessment, Personnel Assessment and Trading Activity Fee" — and "User Fees" — defined to "primarily include Registration Fees, Transparency Services Fees, Dispute Resolution Fees, Qualification Fees, Continuing Education Fees, Corporate Financing Fees and Advertising Fees"), cited in PIABA Lawyers Convince Congress of the Importance of Them Collecting Their Attorneys' Fees, Broker-Dealer Law Corner (June 1, 2018), available at <https://www.bdlawcorner.com/2018/06/piaba-lawyers-convince-congress-of-the-importance-of-them-collecting-their-attorneys-fees/>. ASA recommends FINRA confirm this figure against its most current published annual budget, available at FINRA.org.

¹⁰ *Lawyers & Lobbyists Sector Summary*, OpenSecrets, <https://www.opensecrets.org/industries/indus?Ind=K>. *American Association for Justice Political Action Committee (AAJ PAC)*, InfluenceWatch, <https://www.influencewatch.org/political-party/american-association-for-justice-political-action-committee-aa-j-pac/> *Lawyers / Law Firms Background*, OpenSecrets, <https://www.opensecrets.org/industries/background.php?ind=K01>





III. Necessary Reforms To Restore Confidence.

The recommendations below are intended to be practical, targeted, and achievable within FINRA's existing operational framework. FINRA must restore balance, predictability, and confidence to the arbitration system.

A. Allow Opt-Outs Above a Dollar Threshold. For disputes involving a substantial amount in controversy, firms and customers should be permitted, by mutual agreement or under clearly defined and balanced criteria, to opt out of mandatory FINRA arbitration and proceed instead in court, with federal court as the preferred system where jurisdictional requirements are satisfied. Any opt-out mechanism should apply even-handedly to both sides and be structured so that neither party can use it as a one-way tactical tool.

In those limited, high-stakes cases where jurisdiction exists, federal courts remain best positioned to handle complex products, multiple parties, and novel legal issues because they operate under established rules of evidence, discovery, and motion practice and provide structured opportunities for appellate review. Where federal jurisdiction is not available, any alternative court-access mechanism should be carefully designed to minimize unintended migration of large, complex disputes into state-court systems that lack comparable procedural safeguards. ASA would welcome continued dialogue with FINRA on how to craft an opt-out so that it enhances fairness and predictability without undermining the core role of the FINRA arbitration system for typical retail disputes.

Further, where a member firm has not included a mandatory arbitration clause in its customer agreement, that firm should not be subject to compelled participation in FINRA arbitration at a claimant's election. Mandatory arbitration is a product of contractual agreement between the parties; absent such an agreement, it is fundamentally inequitable to force a firm into a system it never agreed to, particularly where the panel includes no industry representative with practical familiarity with how firms operate — a condition that has become increasingly common.

B. Require Punitive Damages Awards to be Consistent with Applicable Law. FINRA should revise Rule 2268(d)(4) to allow parties, through pre-dispute arbitration agreements, to limit or exclude punitive damages awards where such limitations are consistent with applicable law.

FINRA should also implement clearer safeguards to ensure that punitive damages are awarded only when permitted under applicable law and supported by the requisite factual and legal findings. Punitive damages are an extraordinary remedy, generally reserved for conduct that is willful, malicious, or subject to a specific statutory or common-law standard requiring enhanced damages. Yet arbitration panels are not always required to identify the specific regulation, law, or rule that authorizes an award of punitive damages, nor identify the specific provision applied. This is significant because it makes punitive damage awards difficult to challenge or review.

C. Create Meaningful Rights to Appeal. FINRA should establish a narrowly tailored appeal mechanism for arbitration awards that exceed a specified dollar threshold or that are affected by clear procedural defects. Under the current framework, even awards that appear to reflect significant legal or procedural errors are effectively final, leaving parties without a





practical avenue to correct serious errors of law, misapplications of rules, or material procedural irregularities.

A carefully calibrated appeals process—focused on larger cases and clearly defined grounds such as legal error, manifest disregard of law, or significant procedural violations—would not convert arbitration into full-blown litigation. Instead, it would provide a necessary backstop to prevent the most problematic awards from becoming final solely because the existing system lacks meaningful review. Limited appeals for significant matters would also promote more disciplined decision-making at the panel level, knowing that awards can be scrutinized for basic legal and procedural soundness. A limited appeal right would also provide a necessary check in those cases where panels appear to have disregarded governing law or the absence of any rule violation and instead awarded recovery simply because a customer experienced losses in inherently risky investments.

This would not represent uncharted territory for FINRA, which already operates an established appellate framework in its enforcement proceedings that could readily serve as a model.

IV. Necessary Reforms to Restore Fairness.

The reforms in this Section are equally necessary and presented in no particular order of priority.

A. Alignment of Attorney Fee Awards with State-Law Standards. FINRA should ensure that attorneys' fee awards in arbitration align with applicable state laws governing fee shifting, including reasonableness and proportionality requirements tied to the nature, complexity, and results of the dispute. In many jurisdictions, fee awards must bear a rational relationship to the damages recovered and the work reasonably necessary to achieve that result; yet arbitration awards frequently appear unconstrained by those legal constraints. Greater adherence to state-law standards would promote consistency and predictability, reduce incentives to pursue marginal claims primarily for fee recovery, and reinforce that arbitration outcomes must comply with the same legal principles that would govern fee awards in court.

B. Strengthen the Motion to Dismiss Rule. FINRA should adopt a clearer, more robust motion to dismiss standard modeled on federal Rule 12(b)(6), allowing arbitrators to dismiss claims that do not set forth a cognizable legal claim supported by plausible factual allegations or that are clearly time-barred or directed at the wrong respondent. Providing a meaningful early dismissal mechanism protects firms and individuals from having to incur substantial defense and hearing costs on claims that never should have proceeded, and it keeps the system focused on serious disputes with a plausible factual and legal basis.

C. End Billing for Unused Reserved Time. FINRA should cease billing firms for reserved hearing blocks that are never actually used. Under current practice, firms can be charged for entire sessions even when only a small portion of the reserved time is needed. Eliminating billing for unused time would reduce unnecessary costs for all parties and remove any incentive to over-schedule hearings simply to lock in additional fee revenue.

D. Rebalance Filing Fees and Address "Wrong Respondent" Filings. FINRA's filing fee structure creates a roughly ten-to-one disparity between what firms must pay and what customers





pay to initiate claims, placing an undue burden on smaller and mid-sized firms and encouraging “shotgun” naming of multiple respondents. Unlike American Arbitration Association (AAA) and JAMS, which use more balanced fee models, FINRA’s current approach misaligns incentives by making it cheap to file weak or speculative claims while immediately imposing significant costs on respondents.

ASA recognizes that FINRA’s historically asymmetric fee structure reflects a policy choice to preserve investor access to the system, and we do not seek to price legitimate claimants out of arbitration. But subsidizing access should not come at the cost of creating structural incentives for frivolous, speculative, or “shotgun” filings that impose immediate and disproportionate costs on respondents regardless of the merits.

FINRA should move toward equal or more balanced filing fees for all parties and adopt fee-shifting rules requiring claimants to bear respondents’ fees and costs when they file clearly frivolous, ineligible, or “wrong respondent” claims. Any fee rebalancing should be calibrated so that filing costs remain reasonable for retail customers with legitimate grievances while eliminating the current disparity that makes it economically rational to file weak claims or name multiple respondents without a good-faith basis for doing so. In tandem, FINRA should address data integrity issues in BrokerCheck that allow plaintiff lawyers to name firms based on outdated or inaccurate employment information, and require documentary support at the time of filing to show that each named firm had a real connection to the conduct at issue.

E. Reform U-4 / U-5 Disclosure and Limit Collateral Use of Arbitration Filings. FINRA should modernize Form U4 and U5, as well as the BrokerCheck disclosure framework so that it cannot be misused to generate leverage or serial litigation against individuals and firms. Meritless or withdrawn claims should not create permanent public marks that function as de facto penalties absent any finding of liability.

FINRA should distinguish between allegations, settlements, and actual adjudicated findings in both the U4 reporting framework. FINRA should also ensure BrokerCheck’s public-facing display, permit corrections and expungement under defined and consistently applied criteria, and ensure that its own arbitration records, proceedings, and regulatory referral practices do not treat a single unresolved or meritless dispute as a basis for repeated targeting of the same individuals or firms within the FINRA system absent independent factual justification.

To the extent FINRA has influence over how arbitration outcomes are used in downstream proceedings, including through its referral practices to FINRA Enforcement, then it should exercise that influence to ensure that arbitration awards unsupported by a finding of rule violation do not automatically trigger regulatory consequences without an independent investigation and evidentiary record.

F. Enhancing the Arbitrator Pool Qualifications and Training. The composition and training of the arbitrator pool should be improved so that panels consistently include at least one arbitrator with substantial, current experience in the securities industry. Claimants should no longer be permitted to select an all-public panel whose members lack practical familiarity with how firms operate, how supervisory structures function, and how FINRA rules apply in real-world





settings. FINRA should also provide ongoing training, performance review, and, where appropriate, removal or retraining of arbitrators who consistently demonstrate inadequate understanding of the industry or governing law.

G. Ensure Fair Arbitrator Selection for Newly Added Respondents. In addition, some ASA member firms that act as clearing firms for smaller introducing broker-dealers have observed a recurring practice that further undermines confidence in the fairness of panel selection. In these cases, the claimant initially sues only the small introducing firm—where the primary supervision and suitability obligations reside—and the arbitrators are selected and the panel effectively locked in. Only later, after the panel has been seated, does claimant’s counsel amend to add the clearing firm as an additional ‘deep-pocket’ respondent, leaving the newly added firm with no meaningful opportunity to participate in arbitrator selection or panel composition. This tactic allows claimant’s counsel to exploit the current structure and highlights the need for procedural safeguards that ensure every respondent has a fair voice in the arbitrator selection process.

H. Clarify and Enforce the Six-Year Eligibility Rule. FINRA should reaffirm that its six-year eligibility rule operates as a true statute of repose for system eligibility: claims based on conduct or transactions more than six years old are ineligible for arbitration and should be dismissed. Within that framework, each individual cause of action must still satisfy whatever shorter statute of limitations applies under federal or state law. Arbitrators should be required to dismiss time-barred claims and may not revive them based solely on equitable theories, particularly given firms’ record-retention obligations. Claimants who pursue clearly ineligible, time-barred claims should bear respondents’ system fees associated with those claims.

I. Limit Use of Arbitration Findings in Subsequent Actions. FINRA should adopt an explicit rule providing that arbitration awards — and any factual findings implicit in them — have no collateral estoppel or presumptive effect in regulatory, civil, or employment proceedings absent an independent investigation and record. A single award should not automatically trigger downstream regulatory, civil, or employment consequences untethered from an independent assessment of the facts, particularly where no referral to FINRA Enforcement was made and no independent investigation has occurred.

J. Improve Access to Courts for Certain Institutional or Complex Matters. For institutional disputes and other highly complex cases—such as claims involving sophisticated counterparties, extensive third-party discovery, novel legal questions, or multi-party supervisory issues—FINRA should acknowledge that traditional litigation may be more appropriate than arbitration. Providing clearer pathways to court, in addition to the threshold-based opt-out described above, would allow sophisticated parties to select the system that best matches the complexity and stakes of the dispute and would reduce incentives to force such matters into an arbitration structure ill-suited to handle them.

V. Conclusion.

FINRA has an obligation to restore confidence and fairness to the entire arbitration system by proposing a strong package of comprehensive reforms like those set forth in this letter.





Only by proposing all of these reforms can FINRA realign its arbitration system with its original purpose of being a fair, efficient, and trustworthy system that protects customers, treats firms and associated persons justly, and serves the broader integrity of the securities markets.

To the extent FINRA ultimately determines that it will *not* propose some of the reforms outlined in this letter, then we respectfully request that FINRA provide a clear and detailed explanation for each decision about each recommendation set forth herein in its proposal, accompanied by the data, analysis, and stakeholder feedback on which it relied in declining to implement the requested change, especially if such reliance was based upon a recommendation from PIABA.

We strongly recommend that FINRA propose every recommendation set forth in this letter.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & CEO
American Securities Association

