May 1, 2026

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 26-06: Modernization of FINRA Arbitration Rules, Guidance and Processes

Dear Ms. Mitchell:

I. Introduction

Apex Clearing Corporation ("Apex") appreciates the opportunity to comment on Regulatory Notice 26-06 (the "Notice"), in which the Financial Industry Regulatory Authority, Inc. ("FINRA") requests comment on modernizing FINRA's arbitration rules, guidance, and processes.[1] Apex is a B2B clearing and custody infrastructure provider. Apex does not solicit or open retail accounts, does not make suitability determinations, does not employ retail-facing registered representatives, and does not maintain a customer-facing brand. Apex's services are delivered exclusively to introducing broker-dealers and registered investment advisers under Rule 4311 fully-disclosed clearing agreements that, by design, allocate customer-facing responsibilities to the introducing firm. Apex is nevertheless regularly named as a respondent in customer arbitrations arising from accounts introduced by its correspondents, frequently as a peripheral party, frequently by pro se claimants, and frequently in pleadings that allege no conduct attributable to Apex. That structural posture informs the comments that follow.

This letter addresses three areas where the current arbitration framework produces outcomes for clearing firms that are driven by rule structure rather than by the merits: the scope of prehearing motions to dismiss; the non-allocability of the member surcharge and process fee; and the interaction between Form U4 customer-dispute disclosure and settlement economics. Each stands as an independent reform. An appendix with illustrative proposed rule text is attached.

II. FINRA's Motion to Dismiss Rule Should Be Expanded to Include a Failure-to-State-a-Claim Ground

Apex recommends that FINRA amend Rules 12504 and 13504 to add a fourth enumerated ground on which a panel may act upon a prehearing motion to dismiss: that the claim, accepted as pleaded, fails to state a claim against the moving party on which relief can be granted. This recommendation aligns with the Notice's request for comment on whether FINRA should "change the timing or expand the circumstances under which the panel may act upon a prehearing motion to

[1]FINRA, Regulatory Notice 26-06, FINRA Requests Comment on Modernizing FINRA Arbitration Rules, Guidance and Processes (Mar. 2, 2026) (the "Notice").

dismiss a party or claim" and builds on commenter feedback, flagged by FINRA in the Notice, that FINRA should permit such motions by clearing firms based on the nature of their operations.[2]

A. The Current Structure

Rules 12504(a)(6) and 13504(a)(6) permit prehearing dismissal on three narrow grounds: prior release, lack of association with the account, security, or conduct at issue, or prior full and final adjudication.[3] Denied motions trigger automatic fee-shifting under (a)(9), additional fee-shifting for frivolous motions under (a)(10), sanctions exposure under (a)(11), and a re-filing bar under (a)(8).[4]

B. Comparison to Other Arbitral Fora

The table below summarizes the prehearing dismissal standards in FINRA's arbitration forum and three comparator forums:

Forum	Grounds for prehearing motion to dismiss
FINRA (Rules 12504, 13504)	Three enumerated grounds only: (i) prior release or settlement; (ii) moving party not associated with the account, security, or conduct at issue; or (iii) prior full and final adjudication of the same dispute. No general failure-to-state-a-claim ground.
NFA (Code of Arbitration, Section 7)	Motions to dismiss for failure to state a claim are expressly prohibited. Other motions to dismiss must be included in a timely-filed Answer or Reply. Motions for summary judgment may be raised at any time.
AAA Commercial (Rule R-34)	Arbitrator may allow a dispositive motion on any ground, including failure to state a claim, if the moving party shows the motion is likely to succeed and will dispose of or narrow the issues in the case.
JAMS Comprehensive (Rule 18)	Arbitrator may permit a motion for summary disposition of a claim or issue if the moving party shows the motion is likely to succeed and will dispose of or narrow the issues in the case.

Sources: FINRA Rules 12504 and 13504 (Motions to Dismiss); NFA Code of Arbitration, Section 7 (Motions); AAA Commercial Arbitration Rules and Mediation Procedures, Rule R-34 (Dispositive Motions); JAMS Comprehensive Arbitration Rules and Procedures, Rule 18 (Summary Disposition of a Claim or Issue).

The AAA and JAMS frameworks are instructive because they address a problem that the FINRA framework does not: claims that, even if fully accepted as pleaded, do not state a basis for relief against the named party. Under Rule R-34 of the AAA Commercial rules and Rule 18 of the JAMS Comprehensive rules, an arbitrator may entertain a dispositive motion on a failure-to-state-a-claim basis where the moving party shows that the motion is likely to

[2]Notice, Section B(ii) (Motions to Dismiss) and footnote 106 (noting commenter feedback that FINRA "should amend its rules to expand the circumstances under which the panel may act upon a prehearing motion to dismiss a party or claim (e.g., motions filed by clearing firms based on the nature of their operations)").

[3]FINRA Rules 12504(a)(6) and 13504(a)(6).

[4]FINRA Rules 12504(a)(9) and 13504(a)(9) (hearing session fees associated with a denied motion must be assessed against the moving party); FINRA Rules 12504(a)(10) and 13504(a)(10) (reasonable costs and attorneys' fees for motions deemed frivolous); FINRA Rules 12504(a)(11) and 13504(a)(11) (additional sanctions under Rule 12212 or 13212 for motions filed in bad faith); FINRA Rules 12504(a)(8) and 13504(a)(8) (re-filing bar following denial).

succeed and will dispose of or narrow the issues in the case.[5] The AAA and JAMS standards condition leave to file on a showing of likely success and material simplification of the issues. That threshold preserves the efficiency goals of arbitration. The FINRA framework lacks a calibrated middle ground for claims that, accepted as pleaded, fail to state a basis for relief against the named party.

C. The Clearing-Firm Fact Pattern

A clearing firm under Rule 4311 has no customer-facing role by design. The fully-disclosed clearing agreement, a form of contract FINRA has reviewed and approved as a regulatory matter, allocates account opening, suitability determinations, supervision, and sales-practice conduct to the introducing broker. The clearing firm performs ministerial clearing, custody, and settlement. That allocation is not aspirational; it is the legal and operational structure FINRA itself has built. Yet the current Rule 12504(a)(6)(B) "association with the account" prong is frequently read by panels to defeat dismissal because the clearing firm holds the account, even where the statement of claim alleges no conduct attributable to the clearing firm whatsoever. That reading collapses the regulatory distinction Rule 4311 establishes.

The result is that a clearing firm named as a peripheral party is frequently unable to exit the case on a prehearing basis, even where the statement of claim contains no factual allegation of conduct by the clearing firm that, if true, would give rise to a claim. The firm must answer, participate in discovery, pay process and hearing fees, and wait until the conclusion of the claimant's case-in-chief to move for dismissal under Rule 12504, or settle to exit. The economic logic frequently favors settlement even where the merits do not, because the cost of defending through the conclusion of the claimant's case exceeds the settlement amount. That outcome is a function of the rule structure, not of the merits of any particular claim.

D. Acknowledgment of Counterargument

Apex acknowledges the concern that an expanded motion to dismiss ground may invite routine use and undermine the forum's efficiency goals, including its accessibility to customer claimants. That concern is addressed within the existing Rule 12504 framework and within the proposed ground itself. The existing automatic fee-shifting provision in Rule 12504(a)(9), the additional fee-shifting authority for frivolous motions under Rule 12504(a)(10), the sanctions authority under Rule 12504(a)(11), and the requirement under Rule 12504(a)(8) that a denied motion not be re-filed absent panel order would continue to apply under the expanded ground. The proposed ground would incorporate, as a condition of leave to file, a showing that the motion is likely to succeed and will dispose of or narrow the issues in the case, drawn from the AAA and JAMS standards. The combination of a threshold showing to file, fee-shifting on denial, and sanctions exposure provides a calibrated deterrent against routine or abusive use.

E. Recommended Action

Apex recommends that FINRA amend Rules 12504(a)(6) and 13504(a)(6) to add a fourth enumerated ground on which a panel may act upon a prehearing motion to dismiss: that

[5] AAA Commercial Rule R-34(a) ("The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines the moving party has shown that the motion is likely to succeed and to dispose of or narrow the issues in the case."); JAMS Comprehensive Arbitration Rule 18 (same standard for summary disposition).

the statement of claim, accepted as pleaded, fails to state a claim against the moving party on which relief can be granted. The standard should be calibrated to the arbitration context by incorporating, as a condition of leave to file, a showing that the motion is likely to succeed and will dispose of or narrow the issues in the case, consistent with the standard in AAA Commercial Rule R-34 and JAMS Comprehensive Rule 18. The existing fee-shifting provisions in Rules 12504(a)(9) and 12504(a)(10) and the sanctions authority under Rule 12504(a)(11) should be preserved and should apply to denied motions under the new ground. Proposed rule text is attached as Appendix A.

III. The Non-Allocable Member Surcharge and Process Fee Should Include a Refund Mechanism for Peripheral-Party Respondents

Apex recommends that FINRA amend Rule 12901(b)(1) to expand the existing member-surcharge refund mechanism, and amend Rule 12903 to add a parallel refund mechanism for the member process fee, where the panel denies all claims against a member respondent and expressly finds that the member's role in the conduct at issue was limited to ministerial clearing, custody, or settlement functions. The recommendation is directed at a recurring fact pattern in which a member firm is named as a peripheral respondent, pays the full non-allocable surcharge and process fee, and is ultimately found by the panel not to have been a source of the conduct at issue. The Notice asks whether participants still experience FINRA arbitration as less expensive and faster than litigation and invites comment on changes to the fee structure that would enhance cost-effectiveness.[6] The recommendation in this Section is directed at a specific structural feature of the current fee framework, not at the overall level of member-side fees or the funding mechanism for arbitrator honoraria.

A. The Current Non-Allocable Fee Structure

A member respondent pays a Rule 12901 surcharge and, for claims over $25,000, a Rule 12903 process fee. Both fund arbitrator honoraria and forum operations.[7] Both fees are non-allocable: the panel may not reallocate either fee to any other party.[8]

B. The Existing Refund Mechanism and Its Practical Limitation

Rule 12901(b)(1) provides a refund of the member surcharge on two conditions: (A) the panel denies all of the customer's claims against the member; and (B) the panel allocates all fees assessed pursuant to Rule 12902(a) against the customer.[9] The refund mechanism is structurally available, but the second condition is decisive in practice. Panels are

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[6]Notice, Section A(i), Request for Comment A(i).5 ("Do participants still experience FINRA arbitration as less expensive and faster than litigation? Are there changes that FINRA should consider making to its arbitration forum to make it more expeditious and cost effective relative to courts?").

[7]FINRA Rule 12901(a) (member surcharge schedule); FINRA Rule 12903(a) (member process fee schedule). See FINRA Regulatory Notice 21-04 (2021) (discussing the purpose of member-side arbitration fees in funding arbitrator honoraria and the operation of the forum).

[8]FINRA Rules 12901(a)(6) and 12903(d) (member surcharge and process fee are non-allocable to other parties to the arbitration); see also FINRA Rules 12701(b) and 13701(b).

[9]FINRA Rule 12901(b)(1) ("The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel: (A) Denies all of a customer's claims against the member or associated person; and (B) Allocates all fees assessed pursuant to Rule 12902(a) against the customer."). Rule 12903 does not contain a corresponding refund mechanism for the process fee.

understandably reluctant to allocate hearing session fees against customer claimants, particularly pro se or individually represented customers, because panels view the allocation as an equitable burden on access to the forum. That reluctance operates as a practical barrier to the refund: even where the panel denies all claims against the member, the panel rarely allocates all hearing session fees against the customer, which means the condition for refund is rarely satisfied. Rule 12903, which governs the process fee, contains no refund mechanism at all; the process fee, once paid, is not refundable under any condition.

C. The Peripheral-Party Fact Pattern

For a clearing firm, the gap between the conduct alleged in a typical customer arbitration and the conduct the clearing firm could have engaged in is structural, not factual. A clearing firm does not open accounts, does not assess suitability, does not supervise registered representatives, does not make recommendations, and does not market to retail customers. When a customer alleges sales-practice or suitability-based misconduct, the clearing firm is, as a matter of regulatory architecture, not the source of that conduct. The non-allocable fee structure nevertheless attaches to the clearing firm from the moment it is named, and remains assessed regardless of the panel's eventual finding.

Second, a meaningful proportion of customer arbitrations against clearing firms are filed by pro se claimants. Pro se representation is a legitimate and protected feature of FINRA's arbitration forum, and the observation here is structural rather than critical. When the distinction between introducing broker conduct and clearing firm function is not drawn in the pleading, the clearing firm is named alongside the introducing broker and the non-allocable fees attach from that point forward, regardless of the panel's ultimate determination as to the clearing firm's role. That pleading convention is a consequence of the accessibility of the forum to pro se claimants, which is itself appropriate, but it produces a cost outcome that the existing refund mechanism does not address.

The combined effect is that peripheral-party respondents pay the full non-allocable surcharge and process fee in cases where the panel, on the full record, ultimately finds the respondent was not a source of the conduct at issue, and the existing refund mechanism does not operate because its second condition, allocation of hearing session fees against the customer, is not met. The cost outcome is driven by the intersection of the non-allocability rule and the refund mechanism's condition, not by the merits of the claim against the peripheral-party respondent.

D. Acknowledgment of Counterargument

Apex acknowledges that expanding the refund mechanism has the potential to reduce the pool of member-side forum fees that fund arbitrator honoraria and the operation of the forum, which is the stated purpose of the current fee schedule. FINRA could address this in any of several ways: by limiting the refund to cases where the panel makes an express peripheral-party finding, rather than extending it to all cases of full denial; by monitoring the frequency of refunds under the expanded mechanism and adjusting the underlying fee schedule periodically to preserve honoraria funding; or by structuring the refund as a post-award mechanism so that fees are initially collected and refunded only where the express finding is made. The recommendation is not to reduce the overall member-side fee pool but to adjust the allocation

mechanism so that the pool is not composed of fees paid by respondents the panel has found were not a source of the conduct at issue.

E. Interaction with the Motion to Dismiss Reform

The MTD reform in Section II and the refund mechanism here operate at different points in the arbitration lifecycle: the MTD reform provides a prehearing exit; the refund mechanism operates at the award stage upon a panel finding of peripheral-party status. Each addresses a category of cases the other does not, and each stands on its own.

F. Recommended Action

Apex recommends that FINRA amend Rule 12901(b)(1) to provide an alternative trigger for refund of the member surcharge where the panel (A) denies all of a customer's claims against the member and (B) expressly finds that the member's role in the conduct at issue was limited to ministerial clearing, custody, or settlement functions, or that the member was otherwise not a source of the conduct alleged. The existing refund trigger in Rule 12901(b)(1) based on allocation of hearing session fees against the customer should be preserved. Apex further recommends that FINRA add a parallel refund mechanism to Rule 12903 for the member process fee, operating on the same conditions. Conforming amendments should be made to Rules 13901 and 13903. Proposed rule text is attached as Appendix A.

IV. Form U4 Customer-Dispute Disclosure Creates a Settlement Dynamic That Merits Reconsideration

Apex recommends that FINRA reconsider several features of the Form U4 customer-dispute disclosure regime and coordinate with the North American Securities Administrators Association ("NASAA") and state securities regulators on any resulting changes. Apex raises these issues under the Notice's Section M (General Request for Comment), which invites comment on any rule, guidance, or process affecting the arbitration forum.[10] The Form U4 customer-dispute regime operates within the arbitration forum, and the structural dynamic it produces is closely linked to the fee and prehearing-dismissal frameworks addressed earlier in this letter.

A. The Mechanics of Form U4 Customer-Dispute Disclosure

Under Form U4 Question 14I, a registered representative must report an investment-related, consumer-initiated arbitration or civil litigation in which it is alleged that the representative was involved in one or more sales practice violations. The disclosure is triggered at the moment the representative is named in the pleading, without regard to the merits of the allegation.[11] If the matter is subsequently settled for $15,000 or more, the disclosure remains on the representative's CRD record permanently. If the matter is settled for less than $15,000, the disclosure is removed after 24 months, subject to treatment as a "Historic Complaint" eligible

[10]Notice, Section M (General Request for Comment). The Notice's Section L discusses Form U5 termination-related defamation claims specifically; the Form U4 customer-dispute disclosure regime addressed in this Section is structurally related but distinct, and Apex raises it under the Notice's general invitation to comment on any rule, guidance, or process affecting the arbitration forum.

[11]Form U4, Question 14I; see also FINRA Regulatory Notice 09-23 (raising the monetary threshold for reporting settlements of customer complaints, arbitrations, or civil litigation from $10,000 to $15,000, effective May 18, 2009).

for BrokerCheck display under Rule 8312(b)(2)(G).[12] Arbitration awards and dismissals that do not result in settlement are subject to their own disclosure treatment, including expungement procedures under Rules 2080, 12805, and 13805 for representatives whose conduct is found by a panel not to have been at issue.

B. The Structural Dynamic

The combination of automatic disclosure on filing, permanent reporting at the $15,000 threshold, and limited prehearing exit mechanisms produces a predictable settlement dynamic for cases in which individual registered representatives are named alongside the firm. Where a claim against a named individual is peripheral to the core dispute, or lacks substantive support against that individual, firms frequently settle below the $15,000 threshold, because (a) the cost of defending through the arbitration process exceeds the settlement amount, and (b) a settlement below threshold is the available mechanism to prevent a permanent disclosure for the named individual. The merits of the underlying claim against the named individual are not the driver of that decision.

The dynamic is not specific to any one firm or one fact pattern. It is a function of rule design: (i) disclosure attaches the moment an individual is named in a pleading, regardless of merit; (ii) a $15,000 bright line separates permanent disclosure from 24-month historic-complaint treatment; (iii) under the current Rule 12504 framework, a firm has no prehearing dismissal mechanism to exit claims against peripheral-party individuals on the basis of the pleading itself; and (iv) each settlement that triggers the threshold produces another reportable disclosure, compounding the disclosure profile of individuals who may already have one disclosure on file for earlier, similarly settled matters. The cumulative effect is that the regime generates disclosure outcomes for individuals that may not reflect any determination on the merits.

C. Acknowledgment of Counterargument

Apex acknowledges that pending customer-dispute allegations provide meaningful information to investors evaluating registered representatives. The recommendations in this Section do not seek to reduce the information collected by CRD, the availability of that information to regulators, or the public's ability to see the history of material findings against a representative. The Notice frames the underlying tension, in the Form U5 defamation context, as a balance between the regulatory need for complete and accurate reporting to CRD and member concerns about adverse outcomes based on required reporting.[13] The same balance applies on the Form U4 side. Apex's recommendations are directed at (i) how pending allegations are presented in BrokerCheck relative to settled claims and findings of liability, and (ii) procedural mechanisms that permit disclosure-relevant outcomes to turn more often on the merits of a claim than on the settlement economics the current regime produces. The

[12]Form U4 instructions and interpretive guidance; FINRA Rule 8312(b)(2)(G) (treatment of non-reportable settlements as "Historic Complaints" for purposes of BrokerCheck display).

[13]Notice, Section L, Request for Comment L.1 ("How should the regulatory need for the reporting of complete and accurate information to CRD be balanced with concerns from members regarding adverse arbitration awards based on required reporting and associated persons' expectation for recourse if they believe the reported information is untrue or misleading?"). The balance question raised in L.1, although asked in the Form U5 context, applies with equal force to the Form U4 customer-dispute regime.

information collected remains unchanged; the presentation and the procedural pathway are what this Section proposes to adjust.

D. Specific Recommendations

Apex recommends that FINRA take the following actions, in coordination with NASAA and state regulators as appropriate given the shared ownership of the CRD uniform registration forms.

First, FINRA should revisit the BrokerCheck presentation of pending customer dispute allegations to more clearly distinguish pending allegations from settled claims and from findings of actual liability. The current BrokerCheck display groups these categories together in ways that may overstate the weight of a pending, unproven allegation relative to a finding on the merits. A presentation that separates pending allegations from settled outcomes and from findings would more accurately reflect the underlying status of each disclosure without reducing the information collected. This recommendation lies within FINRA's unilateral authority under Rule 8312.

Second, FINRA should consider a streamlined expungement pathway for Form U4 customer-dispute disclosures tied to claims that are dismissed on the basis of a prehearing motion to dismiss, whether under the existing Rule 12504 grounds or under the failure-to-state-a-claim ground proposed in Section II of this letter. Existing expungement procedures under Rules 2080, 12805, and 13805 were designed against a framework in which prehearing dismissal was narrowly available; if that framework is expanded, the expungement procedures should be updated to address the corresponding category of disposed claims without requiring a separate expungement arbitration hearing in each case.[14] This recommendation lies within FINRA's authority over CRD expungement procedures.

Third, these recommendations interact directly with the motion-to-dismiss reform in Section II. A prehearing exit for claims that, accepted as pleaded, fail to state a claim against an individual would materially reduce the below-threshold settlement dynamic described in subsection B, because the exit would not require a settlement and its corresponding disclosure entry.

V. Conclusion

Apex appreciates the opportunity to comment on the Notice. The three reforms discussed in this letter address the same underlying issue, the recurring fact pattern in which a clearing firm is named in a customer arbitration alongside the introducing party whose conduct is actually at issue, from three procedural angles. Each stands on its own merits. Apex would welcome the opportunity to engage further with FINRA staff, the National Arbitration and Mediation Committee, or any working group convened as part of this review.

[14]FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System); FINRA Rules 12805 and 13805 (procedures for expungement of customer dispute information).

Respectfully submitted,

/s/ Rajeev Khurana
Rajeev Khurana
Chief Legal Officer
Apex Clearing Corporation

APPENDIX A

Illustrative Proposed Rule Text

The proposed rule text below is offered for FINRA's consideration as an illustration of the structure of the amendments discussed in this letter. FINRA staff are the appropriate drafters of final rule text, and Apex anticipates that staff will refine the language in light of the full record of comments on the Notice and any subsequent rulemaking analysis. Parallel conforming amendments to Rules 13504, 13901, and 13903 of the Industry Code would accompany the customer-code amendments shown below.

A.1 Amendment to Rule 12504 (Motions to Dismiss): Fourth Enumerated Ground

Amend current Rule 12504(a)(6) by adding the following subparagraph (D):

(D) The statement of claim, accepted as pleaded, fails to state a claim against the moving party on which relief can be granted. The panel may grant a motion on this ground only if it determines that the moving party has shown that the motion is likely to succeed and will dispose of or narrow the issues in the case.

No amendment is proposed to the existing Rule 12504(a)(9) (automatic fee-shifting for denied motions), Rule 12504(a)(10) (fee-shifting for frivolous motions), or Rule 12504(a)(11) (other sanctions for bad-faith motions). All three provisions would apply to motions filed under the new ground.

A.2 Amendment to Rules 12901(b)(1) and 12903: Refund Mechanism for Peripheral-Party Respondents

Amend current Rule 12901(b)(1) to read:

(b)(1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel: (A) denies all of the customer's claims against the member or associated person; and (B) either (1) allocates all fees assessed pursuant to Rule 12902(a) against the customer, or (2) expressly finds that the member's role in the conduct at issue was limited to ministerial clearing, custody, or settlement functions, or that the member was otherwise not a source of the conduct alleged.

Add new Rule 12903(f) to read:

(f) The Director will refund the process fee paid by a member in an arbitration filed by a customer where the panel meets the conditions set forth in Rule 12901(b)(1).

The amendments preserve the existing refund trigger tied to allocation of hearing session fees against the customer and add an alternative trigger tied to an express finding of peripheral-party status. The parallel mechanism under new Rule 12903(f) provides a refund of the process fee on the same conditions. Conforming amendments to Rules 13901(b) and 13903 would extend the mechanism to intra-industry disputes under the Industry Code.