FINANCIAL SERVICES INSTITUTE
VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

September 2, 2026

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

Re: Supplemental Comments on FINRA Regulatory Notice 26-06

Dear Ms. Piorko Mitchell:

On March 2, FINRA published its request for public comment on key areas of concern relating to FINRA's arbitration forum as part of its broader modernization initiative.[1] The Financial Services Institute ("FSI") appreciates the opportunity to submit these supplemental comments regarding FINRA Regulatory Notice 26-06. In our initial comment letter, FSI recommended several reforms designed to improve the fairness, efficiency, and consistency of FINRA arbitration, including reforms to motion practice, arbitrator training, and the content of arbitration awards. We write now to suggest an additional structural reform that we believe would advance all three objectives.

Background on FSI Members

The Financial Services Institute (FSI) was founded in 2004 and is the only organization advocating on behalf of independent financial services firms and their affiliated independent financial advisors. FSI represents 130,000 advisors, through its member firms, across all 50 states, serving Main Street Americans with affordable, competent, and unbiased financial advice. The independent financial services community has been an important and active part of the lives of American investors for more than 50 years. In the US, there are more than 175,000 independent financial advisors, which account for approximately 60 percent of all producing registered representatives.[1] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).[2]

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms

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[1] Cerulli Associates, Advisor Headcount 2025, on file with author.
[2] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant.

and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $35.7 billion in economic activity.[3] This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $7.2 billion annually to federal, state, and local government taxes.[4]

Discussion

FSI offers these supplemental comments to expand on the themes in FSI's original comment letter. Specifically, FSI recommends that FINRA establish an Arbitration Adjudication Office within the Office of General Counsel, modeled on FINRA's existing Appellate Adjudication function that supports the National Adjudicatory Council ("NAC"). Such an office would not replace arbitrators or diminish their authority to decide disputes. Rather, it would provide legal and procedural support to arbitration panels, improve consistency across cases, and help ensure that arbitration awards are grounded in clearly articulated factual and legal findings.

I. An Adjudicatory Support Function Would Improve Arbitration Quality and Consistency

FSI recommends that FINRA establish an Arbitration Adjudication Office staffed by attorneys with experience in securities law, dispute resolution, and FINRA procedure. This office would provide neutral support to arbitration panels and would assist in the administration of the arbitration process.

FINRA arbitration increasingly involves complex legal and factual issues. Arbitrators are frequently called upon to evaluate claims involving suitability, churning, unauthorized trading, supervision, Regulation Best Interest, complex products, and other issues that require familiarity with securities regulation and industry practices.

As FSI noted in our original comment letter, member firms continue to report concerns regarding inconsistent arbitrator quality and significant variations in arbitrators' understanding of the legal theories presented by claimants. Enhanced training is important. The creation of an Arbitration Adjudication Office would supplement enhanced training to more fully address these concerns. Experienced public arbitrators cannot reasonably be expected to maintain expertise in every area of securities law and regulation.

FINRA has long recognized the value of professional adjudicatory support in the disciplinary context. The NAC is assisted by legal professionals who help ensure consistency, identify applicable legal standards, and facilitate the adjudicatory process. A similar model could be adapted to arbitration without altering the fundamental nature of the forum.

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[3] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).
[4] *See id*.

II. The Office Could Assist with Early Resolution of Clearly Deficient Claims

Our original comment letter explained that respondents are often forced to incur substantial legal fees defending claims that should never have been brought – and that certainly should not have proceeded beyond the initial stages of an arbitration. Even with the limited grounds for dismissal that exist in current rules, parties often must proceed through significant portions of the arbitration process before obtaining dismissal.

An Arbitration Adjudication Office could assist panels by reviewing threshold motions and preparing recommendations regarding whether such motions satisfy FINRA's standards for dismissal. The ultimate decision would remain with the arbitration panel, but the availability of professional legal analysis would promote consistency and facilitate earlier resolution of claims that cannot succeed as a matter of law.

FINRA should also consider whether the office could review motions asserting that a statement of claim fails to allege facts sufficient to establish the elements of a recognized cause of action. While arbitration should remain accessible to investors, parties should not be required to expend substantial resources litigating claims that are legally deficient on their face.

Earlier identification and dismissal of meritless claims would reduce costs for all participants, discourage abusive filings, and allow arbitrators to devote more attention to meritorious disputes.

III. The Office Could Assist Panels in Applying Legal Standards

FSI's prior comment letter emphasized the need for additional arbitrator education regarding common securities-law theories. An Arbitration Adjudication Office could complement these training efforts by providing arbitrators with case-specific legal memoranda identifying the elements of claims and defenses asserted. Such memoranda would not recommend an outcome or make factual findings. Instead, they would assist panels in understanding the legal standards that govern the dispute before them.

For example, where a claimant alleges churning, the office could identify the legal elements generally associated with such a claim, including broker control, excessive trading, and scienter. Where a claimant alleges unauthorized trading, the office could identify the elements relevant to that theory. Similar assistance could be provided with respect to suitability, failure-to-supervise, concentration, and other common claims.

This support would improve consistency across panels while preserving the arbitrators' role as the ultimate factfinders. This support would also make implementing a requirement that the elements of these claims be broken out in arbitration findings more easily administrable.

IV. FINRA Should Require Findings Regarding Essential Elements of Certain Claims

FSI previously recommended that arbitration awards contain greater factual specificity. We continue to believe that this reform is necessary. At present, many arbitration awards provide little insight into why liability was imposed, how damages were calculated, or what conduct the panel concluded caused the claimant's losses. This lack of transparency can undermine confidence in the arbitration process and makes it difficult for parties to understand the basis for the decision.

FINRA should identify certain categories of claims that require findings regarding essential elements when liability is imposed. For example:

- In a churning case, the award should identify the basis for findings regarding control, excessive trading, and scienter.
- In an unauthorized trading case, the award should identify the basis for concluding that authorization was absent.
- In a suitability case, the award should identify why the recommendation was found to be unsuitable.
- In a failure-to-supervise case, the award should identify the supervisory deficiency and explain how that deficiency contributed to the claimant's harm.
- In a concentration case, the award should explain the nature and extent of the concentration that was found to be improper.

The purpose of these findings would not be to create appellate review of arbitration awards. Rather, they would ensure that liability determinations are tied to the legal standards governing the claims asserted and would promote greater analytical rigor in the decision-making process.

An Arbitration Adjudication Office could assist in this effort by helping arbitrators resolve questions about when specific findings are necessary. The Arbitration Adjudication Office could also develop standardized findings templates for commonly asserted causes of action. Such templates would make the process easier for arbitrators while improving the quality and consistency of awards.

Conclusion

FSI believes that many of the challenges identified in Regulatory Notice 26-06—including inconsistent arbitrator quality, insufficiently detailed awards, and the inefficient handling of meritless claims—can be addressed through the creation of a professional adjudicatory support function within FINRA.

FINRA has successfully employed this model in its disciplinary system through the Appellate Adjudication function that supports the NAC. Adapting that approach to arbitration would improve consistency, enhance transparency, facilitate earlier resolution of threshold issues, and strengthen confidence in the arbitration forum while preserving arbitrator independence.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

Andrew M. Hartnett

Andrew M. Hartnett
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