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May 1, 2026

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

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

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 comment on this important proposal, consistent with our mission to preserve and advance access to independent financial advice for Main Street Americans. FSI supports FINRA’s continued efforts to ensure that its arbitration forum remains fair and efficient for investors, member firms, and associated persons. To that end, we propose several modifications to enhance the forum’s fairness and efficiency.

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

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 appreciates the opportunity to comment on FINRA's thoughtful request for broad input on potential arbitration reforms. Arbitration serves as the primary dispute resolution mechanism for the securities industry, so it is critical that it operate in a way that maintains investor and FINRA member confidence. As more fully set out below, we support efforts to modernize the arbitration forum and make a series of targeted proposals to enhance the forum's fairness and efficiency.

1. Preserve Arbitration as the Primary Forum

FSI supports maintaining FINRA arbitration as the central forum for resolving disputes between customers and member firms. While no dispute resolution system is perfect, arbitration provides a streamlined and cost-effective process compared to traditional litigation. While we support maintaining arbitration as the central way to resolve disputes, as more fully set out below, FSI recommends changes that we believe would improve the forum for the benefit of all participants.

2. Encourage Appropriate Use of Motion Practice

Our members' consistent feedback is that it is too difficult to get obviously meritless cases dismissed in FINRA arbitration. Many FSI members complain, for example, that they cannot even obtain dismissal where the conduct at issue did not occur when the claimant was a client. Forcing respondents who, to quote FINRA rule 12504, were "not associated with the account(s), security(ies), or conduct at issue" to hire a lawyer to arbitrate such a case is unfair to respondents and serves no beneficial purpose. Requiring respondents to arbitrate such cases is unfair because respondents have to pay a lawyer to draft an Answer and potentially to conduct discovery and litigate the hearing despite the fact they should never have been named. These litigation costs create an incentive to settle even though no liability exists. Accordingly, fairness, justice, and efficiency demand that such disputes be dismissed as early in the process as possible. Dismissing baseless claims sooner would also allow meritorious claims to be heard more quickly by eliminating a drag on arbitrator resources.

While the FINRA rules do allow for dismissal where the conduct at issue did not occur while the claimant was a client, they unduly disadvantage meritorious motions to dismiss in three ways. Rule 12504(a)(1) discourages motions to dismiss "prior to the conclusion of the party's case in chief." Motions to dismiss prior to the conclusion of the claimant's case are only allowed in three

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

⁴ See *id.*

limited circumstances: if the claim was previously released, previously adjudicated, or the moving party was not involved with the account or conduct at issue.⁵ There is no reason to disfavor such motions because these three circumstances are all ones where it would be manifestly unfair to find the respondent liable. Far from being discouraged, such motions should be encouraged for reasons of efficiency, justice, and fairness.

Another procedural obstacle to meritorious motions to dismiss is Rule 12504(a)(2), which requires that motions to dismiss be made in writing after the Answer has been filed. This requirement should be eliminated. Given the limited circumstances in which a motion to dismiss may be granted under 12504(a)(6), filing an Answer before the motion to dismiss represents an unnecessary burden and cost with no appreciable benefit to justice or to the other parties.⁶

Finally, the wording of 12504(a)(6) should be revised to make clear that arbitrators must dismiss claims when they find any of the three circumstances exist. The current wording states that “the panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that. . .” one of the three circumstances exists. This phrasing gives arbitrators the option to dismiss parties or claims when one of these circumstances exists. In fact, justice demands that parties and claims be dismissed when the arbitrators find that one of these circumstances exists, and the wording should convey this mandate. The wording should be revised to read, “The panel shall dismiss a party or claim under paragraph (a) of this Rule as soon as the panel determines that” one of the three circumstances exists.

Making these changes would improve the efficiency of the forum by more quickly terminating claims that fail as a threshold matter, which would allow uninvolved parties to avoid the cost of paying counsel to draft an Answer, to participate in discovery, and ultimately to litigate an arbitration hearing. It would also remove an incentive to settle baseless claims. At the same time, because the grounds for granting dismissal remain so narrow, these changes would have no impact on meritorious arbitrations filed by claimants.

In short, these changes would allow clearly erroneous claims to be dismissed much earlier in the dispute thereby promoting judicial economy and removing an unjust source of leverage for plaintiffs.

3. Eligibility Rule Challenges Should Be Heard Sooner

Under Rule 12206, claims must be arbitrated within six years of the occurrence giving rise to the claim. The current process for dismissing a claim pursuant to Rule 12206 involves first filing an answer and later filing a motion to dismiss on eligibility grounds. Consistent with the previous argument, given that Rule 12206 motions to dismiss are threshold matters, they should be able to be brought immediately and before filing the Answer.

FINRA also requested comment on whether the eligibility rule should be treated as a statute of repose or whether there should be exceptions to it. The six-year eligibility rule is a statute of repose to which there are no exceptions. This is designed to ensure that arbitrations occur when evidence is reliable, with full documentary records and witness reliability. Our

⁵ FINRA Rule 12504(a)(6).

⁶ Allowing a motion to dismiss prior to an Answer would require certain other changes – for example, the 45 days to file an Answer would need to be tolled until the motion to dismiss ruling.

members report that inconsistent application of Rule 12206 means that arbitrations sometimes proceed based on transactions that occurred 10 or more years prior to the arbitration, despite the evidentiary degradation that has occurred and despite the clear language of Rule 12206.

FSI recommends increasing training for arbitrators on the mandatory nature of Rule 12206 and allowing eligibility challenges under Rule 12206 as soon as the petition is filed.

4. Arbitrator Quality Should Be Addressed Through Training and Monitoring

FSI supports efforts to enhance the arbitrator pool with more qualified arbitrators. FSI members have expressed significant concerns regarding inconsistent arbitrator quality, including issues with arbitrators who do not understand the allegations a claimant has made, arbitrators who exercise no control over the proceedings and allow parties to run roughshod over procedural and other rules of the forum, and even arbitrators who have fallen asleep during hearings. This is not a matter of qualifications: We believe the current requirements of a college degree and five years of work experience are appropriate. Instead, FSI recommends improved training for FINRA arbitrators, creating a list of arbitrators whose enhanced training qualifies them to hear particularly complex cases, removing or loosening geographic constraints, and a more robust monitoring program.

At first glance, the most obvious way to improve arbitrators' qualifications is to increase their compensation. FSI does not oppose reasonable adjustments to arbitrator honoraria, but does not believe that the issues of arbitrator quality can be solved solely by increasing arbitrator compensation without dramatically and adversely impacting the affordability of the forum.

In terms of training, FSI appreciates that arbitrators must take training and pass a test before being qualified as an arbitrator. It is also appropriate that FINRA makes available to arbitrators additional training on topics such as the prehearing conference and discovery. Despite this training, there remain too few arbitrators who possess subject matter expertise, who are familiar with adjudicatory tactics to manage a hearing, and with other elements of law that are critical to adversarial proceedings, such as the attorney-client privilege and the obligation to maintain a neutral advocacy position. More training on the substantive theories arbitrators are most likely to see is particularly important: What is a churning case? What constitutes excessive trading? What does "best interest" mean? Additional training on these concepts would improve the efficiency, fairness, and effectiveness of FINRA Arbitration.

In addition to creating and offering this additional training, the required training hours to serve as an arbitrator should be expanded. In an ideal world, our recommended additional training would be required of every arbitrator. A good start would be to implement a continuing education system whereby training must be taken each year in order to remain active on the roster.

We also recommend that FINRA create a roster of "complex claim arbitrators" who have demonstrated a particular expertise in the securities industry and its regulations. A similar concept already exists in that panel chairs must take extra training – and receive a larger honorarium in light of the increased responsibility and training load. Similarly, FINRA should develop and introduce training for "complex claim arbitrators," who receive specialized training to hear cases involving claims in excess of \$750,000 or that involve issues that can only be understood by those with particular expertise. Arbitrators who complete such training would be deemed "complex

claim arbitrators,” would be designated as such on the roster, could receive an increased honorarium, and would be required in cases involving claims over \$750,000.

Another way to improve arbitrator quality is to loosen or eliminate the geographic restrictions in compiling arbitrator lists. In areas with fewer arbitrators, the arbitrator quality issue is exacerbated because arbitrator lists in that area have fewer options and those options tend to appear again and again. In this era of videoconferencing, however, loosening this geographic restriction to allow a broader selection of arbitrators need not even raise arbitration costs. Moreover, the ability to select from a broader list of arbitrators would meaningfully improve some of the arbitrator quality issues our members have seen.

Finally, we recommend that FINRA Dispute Resolution create an expanded system of arbitrator monitoring. It is simply inexcusable for an arbitrator to fall asleep during adversarial proceedings that affect firms’ and advisors’ futures and sometimes involve million-dollar disputes. Unprofessional conduct like this should result in arbitrators being stricken from the roster of arbitrators. Dispute Resolution should also monitor arbitration awards for anomalous outcomes. If they occur, Dispute Resolution should follow-up to understand why they occurred. If the answer is problematic, such as an award not based on the facts and law, Dispute Resolution should be empowered to require additional training of the arbitrators and, in the case of extreme or repeated misconduct, to strike an arbitrator from the roster. None of this is designed to prevent arbitrators from making the decisions they think are best, but rather to ensure that the arbitrators making the decisions they think are best are doing so based on the facts and applicable law.

5. Arbitration Awards Should Be Made More Specific

FSI members report that they too often see arbitration awards where the award leaves key issues unclear. For example, our members report that they often wonder why the arbitrators chose a certain damages amount, how the arbitrators calculated the damages award, and even what actions by respondents the arbitrators believe caused the claimant’s damages. This lack of clarity is not altogether surprising given that FINRA arbitrations often require non-lawyers to make complicated decisions of facts and law.

In civil courts, jury instructions help non-lawyers make decisions in conformity with the law. FSI recommends adapting this concept to arbitration awards. FSI acknowledges, of course, the challenge posed by the lack of judge to resolve disputes between the parties about what the “jury instructions” should say. Nonetheless, expanding the existing list of items that must appear in the award to include a description of certain legal elements would improve the quality and clarity of decision-making.

A basic version of this concept should involve a requirement that the arbitrators fill in a causation portion of the award to describe why they believe the claimant’s damages were caused by the respondent’s conduct. Another basic version of this concept would require a damages calculation so that it is clear how the panel reached that damages conclusion. A more advanced version of this concept could involve something more akin to a traditional jury instruction whereby, for example, the elements of a churning case could be broken down, and the arbitrators could fill in what evidence caused them to find each of the elements of churning. Of course, an arbitrator would only need to find the elements of churning where it is alleged by the parties. Implementing these requirements in awards would bring greater analytical rigor and clarity to arbitration decisions.

6. Eliminate All-Public Panels Unless All Parties Consent to Their Use

Under FINRA Rule 12403, claimants can strike all non-public arbitrators, resulting in an all-public arbitrator panel. Our members describe arbitrators with securities industry experience as the most useful arbitrators because of their in-depth knowledge of the securities industry and regulations. Far from favoring one side, our members report that this background allows these arbitrators to hone in on weaknesses in the respondents' arguments because such problems offend them personally. Securities industry experience can also be a resource to the other arbitrators as they seek to understand common or best practices within the industry. In short, these non-public arbitrators can help the arbitration panel identify and analyze the key issues affecting liability. Accordingly, the option for all-public panels should be eliminated unless all parties agree to it.

7. Discovery Reform Should Focus on Proportionality and Clarity

Discovery remains one of the most significant drivers of cost in arbitration. FSI members consistently report that discovery in arbitration can be more burdensome than anticipated and is often applied inconsistently across cases. In practice, firms are frequently required to produce extensive records without clear limitations, leading to increased costs and operational strain. FSI supports efforts to modernize the Discovery Guide, particularly to reflect current electronic recordkeeping practices and the increasing volume of digital communications. However, we urge FINRA to avoid expanding discovery obligations in a manner that increases burden and expense. Instead, reforms should encourage proportionality in discovery requests and provide arbitrators with clearer authority to limit excessive or duplicative requests.

8. Access to Expungement is Necessary Given the Reporting of Unverified Complaints

FSI believes that a fair and accessible expungement process is essential to protect associated persons from the lasting impact of unfounded or inaccurate customer dispute information. FSI has long advocated for reforms that balance investor transparency with fairness to financial advisors, particularly given the reputational harm that can result from disclosure of allegations that are later determined to be false or misleading. Without a workable expungement process, advisors may face long-term career consequences from claims that lack merit. Should FINRA desire to make further reforms in this area, it is crucial that they not impose additional procedural barriers to financial advisors obtaining expungement.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

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

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew M. Hartnett". The signature is written in a cursive style with a large initial 'A'.

Andrew M. Hartnett
Vice President & Deputy General Counsel