# Steven B. Caruso

The purpose of this submission is to provide the Financial Industry Regulatory Authority, Inc. ("FINRA") with comments to Regulatory Notice 26-06 ("RN 26-06") that was issued on March 2, 2026.

I am a retired attorney whose prior practice was exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry. Moreover, I am a past Chairman of FINRA's National Arbitration and Mediation Committee ("NAMC") and a former public member of the NAMC – in fact, I served in both positions during two separate and distinct terms; a former Chairman of FINRA's Discovery Task Force Committee ("DTFC"); a former member of the Securities Investor Protection Corporation ("SIPC") Modernization Task Force; and a former President, former member and current Director Emeritus of the Public Investors Advocate Bar Association ("PIABA").

It is my understanding his RN 26-06 requests comment on "key areas of concern" raised by purported "commenters and others" relating to FINRA's arbitration forum.

This predicate statement is disingenuous, at best, in view of the fact that a majority of the "areas of concern" in RN 26-06 are the very same issues that were raised in the July 11, 2025 correspondence of SIFMA that was submitted to FINRA's Executive Vice President and Chief Legal Officer.[1]

At the same time, while RN 26-06 states that "FINRA is reviewing its rules, guidance and processes to modernize requirements, facilitate innovation and eliminate unnecessary burdens" in order "to help ensure that customers, members and their associated persons are treated fairly in an efficient and transparent arbitration forum," it is abundantly clear that, through the issuance of RN 26-06, FINRA is on the precipice of the abandonment of its "mission to protect investors and safeguard the integrity of our vibrant capital markets to ensure that everyone can invest with confidence."

This opinion is self-evident when consideration is given, for example, to the contention in RN 26-06 that, "[a]s part of the FINRA Forward rule modernization initiative, FINRA initially published three requests for comment (the rule modernization *Notices*)" and that, "[o]f the 127 comments received in response to the rule modernization *Notices*, 13 included arbitration-related concerns or recommendations" *most* of which related "to the arbitration of disputes between customers and members or associated persons."

While a "concern or recommendation" comment rate of 10.24% (13 of 127) would generally be considered statistically insignificant if it were to be viewed from an

---

[1]/ *See*, Letter from Alyssa Pompei, Vice President and Assistant General Counsel, and Kevin Carroll, Deputy General Counsel, SIFMA, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated July 11, 2025, available at https://www.sifma.org/advocacy/letters/recommendations-for-finra-arbitration.

intellectually honest perspective, it must be noted that, of the stated 13 comments, there were 5 that were duplicative and had been submitted by the same entities.[2]

These statistics, by themselves, do not support the contention that an "efficient and transparent arbitration forum" requires the consideration of the drastic potential changes that are included within RN 26-06 – especially when it is recognized that FINRA's arbitration program is predicated on the *mandatory* arbitration of disputes that may arise between public investors and FINRA member firms and/or their associated persons.[3]

Notwithstanding the preceding general comments, the balance of this comment letter will address several of the more draconian questions that were raised in RN 26-06.

**Forum Selection**

Question A(i).2: Should FINRA no longer allow in its arbitration forum certain categories of claims (*e.g.*, of a certain complexity or value)?

This question presupposes that arbitrators are not qualified to decide a dispute that may be considered complex or that are over a certain valuation. How would complex be defined and by whom remains elusive. Further, how would the certain threshold valuation be determined and by whom? These unanswered questions clearly indicate that this portion of RN 26-06 is designed to limit the potential monetary exposure of FINRA member firms and associated persons – both at the expense of main street investors.

Question A(i).4: Should FINRA permit arbitration in its forum only where both parties agree to such arbitration post dispute?

This question is once again designed to provide FINRA member firms and their associated persons with economic leverage over main street investors who, post-dispute, would be subject to economic extortion in view of the fact that arbitration is overwhelmingly viewed as being faster and less expensive than court house litigation.

**Eligibility and Motions to Dismiss**

Question B(i).2: Should FINRA amend the eligibility rule to expressly allow claims in FINRA's arbitration forum that arise from transactions or wrongful events that occurred more than six years prior to the claim being filed if, for example, there are ongoing damages or concealment of the harm?

---

[2]/ For example, of the 13 comment letters submitted to FINRA, 3 had been submitted by PIABA and 2 had been submitted by SIFMA. When the 3 duplicates are redacted, the 10 remaining comments produce a "concern or recommendation" comment rate of only 7.87%.

[3]/ As stated in RN 26-06, "[b]roker-dealers and investment advisers often require customers to enter into agreements to arbitrate disputes arising from the services provided to such customers, as a condition to opening an account."

This question is disingenuous, at best, in view of the fact that all of FINRA's arbitrator training materials already provide for the filing of claims that arose more than six years prior to the date of filing if there was concealment of the harm and/or ongoing damages.

If, for example, the eligibility rule was to be so amended, who would decide if there were ongoing damages and/or concealment of the harm, how would both of those terms be defined and, most importantly, what standard and at what stage of the arbitration proceeding would a motion to dismiss be permitted (i.e., before the discovery phase of the arbitration proceeding or after?).

**Arbitrator Classification and Selection**

Question D.1: Should FINRA amend the definition of "public arbitrator" provided in Rules 12100(aa) and 13100(x) to modify or remove any of the criteria that disqualify an arbitrator from service as a public arbitrator to expand the public roster? If so, which criteria and why?

This question is a blatant attempt to reverse the public arbitrator definition rules that were enacted about a decade ago, on a bi-partisan basis, so that arbitrators with ties to the securities industry would not be potentially biased against public investors in arbitration proceedings. It is ironic that FINRA, which touts its supposed neutrality as administrator of its arbitration forum, would even consider stacking the public arbitrator pool with more individuals who have a connection to member firms and/or their associated persons.

**Arbitrator Training**

Question E.3: Should FINRA implement additional training requirements on substantive elements of law or complex investment products for all arbitrators beyond the Basic Arbitrator Training Program?

This question once again raises the issue as to who would decide what substantive elements of law or complex investment products would need to be included in the arbitrator training materials, what would those elements and/or descriptions consist of and what involvement, if any, would public investors and/or their advocates have in the formulation of those training materials.

**Hearing Oversight and Efficiency**

Should FINRA establish a central contact point or support system to assist arbitrators with procedural or evidentiary questions during proceedings?

This question indicates a clear preference to undermine arbitrator decision making. If FINRA is intent on being an active participant in arbitration proceedings that are filed in its forum, then the façade of it being a "neutral administrator" would be exposed as a sham and would irreparably harm public investors.

**Punitive Damages**

Finally, it is this portion of RN 26-06 which raises the most troubling issues that, if adopted and/or modified, would undermine investor protection and relegate the FINRA arbitration forum to a system which systemically deprives individual investors of their constitutional rights and general historical principles of equity and fairness.

The questions presented on this issue include the following:

• Should FINRA maintain the current framework that allows arbitrators to award punitive damages?

• Should FINRA permit parties to agree in pre-dispute arbitration agreements to preclude or limit punitive damages?

• Should FINRA impose a cap on punitive damages awards to address concerns about excessive awards in the absence of judicial safeguards?

• Should FINRA require that arbitrators considering requests for punitive damages have additional experience and qualifications?

• Should FINRA develop an arbitration appeals process relating to awards of punitive damages?

There is no doubt that, through the publication of these questions, FINRA desires to further placate its member firms through the limitation of potential punitive damages awards that arbitrators are empowered to render in customer-initiated arbitration proceedings.

Consider, for example, the recent speech that FINRA's CEO gave before the SIFMA Compliance & Legal 2026 Annual Conference[4] where he allegedly "noted that some of the proposed changes, such as those related to punitive damages, would historically have impacted a very small portion of cases and presented FINRA with the opportunity to make changes while preserving the core of the arbitration program."

While I am not hopeful, given their past record, that the U.S. Securities & Exchange Commission will put a stop to the charade that is being pursued by the conflicted FINRA Board of Governors in the arbitration context, I do remain hopeful that the U.S. Congress will convene hearings that will expose the motivations that served as the predicate for the issuance of RN 26-06.

---

[4]/ See, e.g., *FINRA President and CEO Robert Cook Provides Update on 'FINRA Forward' at the SIFMA Compliance & Legal 2026 Annual Conference*, available at https://www.jdsupra.com/legalnews/finra-president-and-ceo-robert-cook-4243606/.

It is ironic that, under our system of jurisprudence, ordinary citizens are entrusted to decide death penalty cases but, when it comes to financial penalties being imposed on FINRA member firms, FINRA believes that arbitrators are too stupid to decide whether misconduct warrants the imposition of punitive damages in the “small portion of cases” that are decided in its arbitration forum.

A final point that merits consideration on the issue of punitive damages is the fact that, under the Federal Arbitration Act of 1925, parties have the right to challenge arbitration awards, rendered by an arbitration panel in FINRA’s forum, through the filing of a motion to vacate, modify or correct the award in a court of competent jurisdiction.

**Conclusion**

I spent a significant portion of my professional career in the pursuit of achieving the objective of making the FINRA arbitration forum the “gold standard” of alternative dispute resolution.

I was joined in this effort by the multitude of professionals who work in FINRA’s Dispute Resolution Department who were also committed to a forum that was balanced and fair for all participants – claimants, respondents and arbitrators.

It is thus disappointing to see that FINRA has undertaken the process of issuing RN 26-06 – a regulatory notice that will be overwhelmingly responded to by only its own member firms to whom it was issued – without the recognition that the responses it does receive will be statistically dishonest.

Thank you for providing me with the opportunity to submit my comments on this matter.