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May 1, 2026

By email to pubcom@finra.org

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

RE: Regulatory Notice 26-06: *Arbitration*

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 26-06: *Arbitration* (the "Notice"),[2] which seeks feedback to "help FINRA consider how to further revise its arbitration rules, guidance and processes." As an initial matter, it should be recognized that many of the rules and processes discussed in the Notice are the result of improvements made through years of discussion and feedback from stakeholders. FINRA should therefore refrain from unwinding those improvements in the name of modernization.

This is especially so given the predominance of mandatory pre-dispute arbitration clauses in FINRA member firm customer agreements. For years, NASAA has argued in favor of investor choice, and we restate our opposition to such clauses in retail customer agreements.[3] We encourage FINRA to revisit its views on this fundamental issue of investor fairness. Notwithstanding our preference for an end to such clauses, and with the understanding that we may submit comments on any specific proposals by FINRA, we offer the following comments and suggestions to preserve and enhance the fairness and accessibility of FINRA's arbitration forum ("FINRA arbitration" or the "FINRA forum").

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] *See* Regulatory Notice 26-06 (Mar. 2, 2026).

[3] *See*, *e.g.*, Letter from A. Heath Abshure, NASAA President, to the Honorable Mary Jo White, SEC, Chair, Re: Mandatory Predispute Arbitration Clauses (May 3, 2013).

I. FINRA should discontinue its policy of allowing mandatory pre-dispute arbitration clauses in retail customer agreements.

Investors should be entitled to their choice of forum when bringing claims to address harms caused by the firms and individuals they trust with their investments. While some customers might reasonably want to arbitrate their claims, the putative benefits of arbitration – such as lower fees and quicker resolution – come at a cost; arbitration awards are generally not appealable, well-reasoned written decisions are not the norm, and it is extremely difficult to correct prejudicial errors in awards.[4] Some customers therefore might prefer to sue in court.

This decision should not be foreclosed by burying pre-dispute arbitration clauses into lengthy customer agreements, which are contracts of adhesion usually filled with terms that customers may not fully understand and have no power to change.[5] This remains true notwithstanding FINRA's efforts to highlight the significance of such clauses and to limit abusive practices in this area.[6] Further, the fact that such clauses are legally valid does not mean that permitting their use is good public policy. In fact, we believe it is harmful to customers, the industry, and the development of legal precedent about broker-dealer conduct standards. We therefore encourage FINRA to revisit its views on this fundamental issue.

However, absent any change to these practices, we believe that providing a fair and accessible forum is a crucial part of FINRA's mission "to protect investors and safeguard the integrity of our vibrant capital markets to ensure that everyone can invest with confidence."[7] FINRA rules should guarantee fair access to the FINRA forum and a transparent and unbiased process that includes equal rights to select arbitrators, obtain relevant evidence, and present that information to neutral arbitrators well-versed in the applicable law. FINRA rules should also be designed to produce outcomes consistent with applicable law. Notwithstanding our preference for an end to the industry practice of requiring pre-dispute arbitration clauses, we offer the following comments, recommendations, and suggestions.

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4 Confirmation proceedings are not a substitute for meaningful appellate review. *See*, *e.g.*, *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572-73 (2013) ("The potential for . . . mistakes is the price of agreeing to arbitration."); *ARW Exploration Corp. v. Aguirre*, 45 F.3d 1455, 1462 (10th Cir. 1995) ("[T]he standard of review of arbitral awards 'is among the narrowest known to the law.'").

5 Customers cannot simply go to another firm because mandatory arbitration clauses are ubiquitous. Nor can retail investors simply eschew brokerage services altogether, because those services are essential to many investors' ability to invest and save for retirement, homeownership, and other expenses.

6 *E.g.*, NASD Notice to Members 05-09 (Jan. 31, 2005) (discussing amendments to NASD Rule 3110(f) designed to heighten disclosure standards for pre-dispute arbitration provisions in customer account agreements); FINRA Regulatory Notice 21-16 (Apr. 21, 2021) (noting, among other things, that FINRA rules preclude the inclusion of class action waivers in pre-dispute arbitration provisions).

7 *About FINRA*, FINRA.org (last viewed Apr. 22, 2026).

II. Retail customers should always be able to arbitrate in the FINRA forum if they choose.

FINRA rules appropriately guarantee customers the right to seek redress in the FINRA forum, and customers do not waive that right by signing an alternative agreement or no agreement at all.[8] Nonetheless, members and customers can also choose, by mutual consent, to resolve a particular dispute in another forum.[9] While we would prefer that FINRA not allow pre-dispute arbitration clauses in customer agreements, we believe that the current framework appropriately guarantees that FINRA arbitration remains one of the options available to customers. Parties can mutually agree to take their disputes to any forum, but customers, particularly retail customers, should always have the choice to arbitrate in the FINRA forum.[10]

Preserving customer access to the FINRA forum serves important investor protection goals. Only in its own forum can FINRA ensure that all parties and relevant interests are protected by applicable FINRA rules and benefit from resources such as FINRA's Discovery Guide. These rules and resources were designed and have evolved in the context of the securities industry disputes that commonly appear in the forum. They have also been reviewed by securities regulators and improved over time with input from a variety of stakeholders. The wide availability of hearing locations and cost structure[11] further support fairness by mitigating the burdens on customers seeking relief for financial harm.

The Notice asks whether FINRA should prohibit certain claims – *i.e.*, claims that surpass an undefined threshold of "complexity or value" and claims involving institutional customers – from the FINRA forum, or "allow parties to contractually agree in advance to opt out of FINRA arbitration" for such disputes.[12] FINRA should do neither.

As an initial matter, there is little evidence publicly available to indicate that the FINRA forum is ill-suited to handle complex or high-dollar claims. While some have questioned whether the FINRA forum is best suited for such claims,[13] those questions are not compelling evidence that it is not. Indeed, FINRA's historical efforts to provide specialized "procedural flexibility" for large and complex cases were met with a notable lack of enthusiasm from the parties themselves, largely

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8 *See* FINRA Rule 12200; Notice at 6-8.

9 Notice at 6-7.

10 While our comments are focused principally on customers, associated persons (including registered persons) should have a similar right to choose the FINRA forum to resolve disputes with FINRA member firms and other registered/associated persons. *See* FINRA Rule 13200. We take no position about whether FINRA should allow parties to arbitrate intra-industry disputes in non-FINRA forums by mutual agreement.

11 *See* Notice at 6.

12 *Id*. at 9-10, Requests for Comment A(i).2 and A(i).3.

13 See FINRA Dispute Resolution Task Force, *Final Report and Recommendations of the FINRA Dispute Resolution Task Force*, 30 (December 7, 2015) ("Task Force Report").

because existing rules already provided many of the enhancements and benefits they were seeking.[14]

We see no good reason for FINRA to discriminate against certain customers and prejudge their claims simply because they have suffered greater financial harm than others or they happen to be institutional investors. FINRA should therefore reject any suggestion that it bar claims from FINRA arbitration based on perceived "complexity," the amount of damages alleged, or the types of customers involved. The notion of complexity, in particular, is subjective and should not serve as a basis to preclude access to FINRA arbitration. Given that nothing currently prevents parties from agreeing to resolve a particular dispute in a non-FINRA forum, FINRA also should not allow its member firms to preemptively lock retail customers out of the FINRA forum through pre-dispute resolution agreements. If such a proposal is deemed necessary or appropriate, it should be strictly limited to institutional customers[15] who are more likely to have sophisticated representation and, more importantly, the bargaining power necessary to engage in bona fide, arms-length negotiations regarding the terms of the agreement.

For similar reasons, we see no good reason to require mutual agreement after a dispute has arisen to arbitrate in the FINRA forum.[16] Such a requirement would be little more than a veto that well-resourced firms could use to unilaterally force customers into forums that may be more expensive, procedurally dense, and ultimately more advantageous to the firm. FINRA should not do anything to further tilt the power imbalance between firms and their customers towards its members.

III. The "eligibility rule" should remain flexible to preserve fair access to the FINRA forum.

Under current FINRA rules, "[n]o claim shall be eligible for submission to [FINRA] arbitration . . . where six years have elapsed from the occurrence or event giving rise to the claim."[17] The so-called "eligibility rule" should be interpreted and applied flexibly to preserve fair access to the FINRA forum.

At minimum, the eligibility rule should be tolled during any period in which there is ongoing fraud or other concealment (including "lulling"),[18] the claimant is legally incapacitated,

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[14] *See id*. at 30-31 (discussing pilot programs launched by NASD in 1995 and FINRA in 2012 to give parties in large cases more control over the administration and procedures in their cases, and noting that "less than one percent" of qualifying cases opted into the NASD pilot program and "a total of nine cases" over approximately two and a half years opted into FINRA pilot program).

[15] Such a proposal could apply to customers who are "institutional investors" as defined in FINRA Rule 2210(a)(4), excepting "registered person(s) of [FINRA] member[s]."

[16] *See* Notice at 10, Request for Comment A(i).4.

[17] FINRA Rules 12206(a), 13206(a).

[18] Assoc. of Cert. Fraud Examiners, *Quiet the Storm: Proving "Lulling" Actions in Fraud Cases*, ACFE Insights Blog (Feb. 2026).

or the claimant otherwise did not know and could not reasonably have known of the alleged harm or breach of duty (even though they knew about, *e.g.*, the recommendation or transaction at issue). Courts regularly apply similar equitable tolling rules, and states routinely codify similar policies to avoid doubt as to the applicability of those rules.[19] FINRA's Basic Arbitrator Training Program appropriately instructs arbitrators to "consider whether a continuing occurrence or event is giving rise to the dispute,"[20] and FINRA should continue to provide this training to its arbitrators. However, we recommend that FINRA either amend the eligibility rule or provide clear, written guidance that determinations of eligibility must account for the factors discussed above if those factors are brought to the arbitrators' attention. Including uniform tolling conditions in FINRA rules or guidance would also help avoid the need to litigate complex state-specific tolling issues for every case, and would therefore be more efficient than eliminating the eligibility rule in favor of state-specific statutes of limitations.[21]

FINRA has received feedback suggesting that the eligibility rule should function as a strict statute of repose that bars claims based on transactions older than six years from FINRA arbitration.[22] FINRA should reject that approach for three reasons. First, a strict statute of repose would incentivize deception and concealment to run out the clock, betting that the higher cost and perceived difficulties of suing in court will effectively deter most claims. Second, focusing exclusively on the initial act ignores the reality that many broker-customer relationships involve ongoing relationships of trust, rather than single product purchases.[23] Third, it would effectively preclude relief for conduct involving certain kinds of investments that have features – such as

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[19] *See*, *e.g.*, *In re KNH Aviation Servs., Inc.*, 549 B.R. 356, 365-66 (Bankr. D. S.C. 2016); *Ruso v. Morrison*, 695 F. Supp. 2d 33, 45-47 (S.D.N.Y. 2010); *Ecodyne Corp. v. Guthrie North America, Inc.*, 716 F. Supp. 1132, 1135 (N.D. Ill. 1989); Cal. Welf. & Inst. Code § 15657.7 ("An action for damages . . . for financial abuse of an elder or dependent adult . . . shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse."); Tex. Bus. & Com. Code Ann. § 17.565 ("All actions [for deceptive trade practices] must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.")

[20] Notice at 13 ("The transcript informs arbitrators that they should consider whether a continuing occurrence or event is giving rise to the dispute, such as when a customer may have purchased stock 10 years ago, but alleges ongoing fraud starting with the purchase which continued to a date within six years of the claim's filing date.").

[21] *See id*. at 14, Request for Comment B(i).1. While the flexible approach described here is appropriate and necessary to preserve fair access to the FINRA forum for customer claims and substantive intra-industry disputes, this flexibility is *unnecessary* for expungement claims because the disclosure of customer dispute information involves a series of overt acts and established regulatory obligations. An associated person cannot plausibly claim that such acts or obligations were hidden from them, and FINRA Rules 12805(a)(1)(A) and 13805(a)(2) fairly limit the time for expungement requests.

[22] *See id*. at 13-14 and Request for Comment B(i).3.

[23] This is true even when the relationship does not give rise to a continuous or ongoing fiduciary duty.

opaque structures, lock-up or surrender periods, or other liquidity limitations – that can make it difficult to identify problems in the time allowed.

Applying the eligibility rule flexibly as described above would not be unfair to member firms or their associated persons. Some commenters have argued that claims must be brought within six years of the transaction because SEC and FINRA rules only require firms to keep relevant records for six years.[24] But SEC and FINRA rules establish a regulatory floor for record retention, not a deadline for record disposal.[25] These requirements were designed to serve important investor protection and regulatory purposes, including regulatory examinations and oversight, not to ensure that firms maintain records as potential defenses to customer claims.[26] Firms are capable of assessing their own risks and making determinations about whether the minimum retention period is sufficient to guard against litigation risk. Moreover, technological developments like cloud storage have minimized the burden of storing and retrieving records when needed. Thus, a firm's business decision to dispose of a record after a minimum retention period cannot fairly be cited as a reason to deny a customer's right to seek relief in FINRA arbitration. While we anticipate that some commenters will argue that they need certainty or finality, a strict eligibility rule would not provide that. Since the eligibility rule only governs access to the FINRA forum, it would not extinguish a customer's claims. Rather than providing certainty or finality, a strict reading of the eligibility rule could add uncertainty by pushing FINRA-ineligible claims into court, where firms and associated persons may be forced to litigate the same or similar issues in a more procedurally-dense forum, likely at a higher cost for all parties.

IV. FINRA arbitrators should have the experience, training, and guidance to adjudicate disputes in accordance with applicable law.

As other commenters have noted, FINRA arbitrators serve, in effect, as both judge and jury in adjudicating the disputes that come before them. As such, they are entrusted with significant power and responsibility, and FINRA should regularly evaluate the training it makes available to arbitrators, including any mandatory training requirements. We generally support recent efforts by FINRA to enhance the required qualifications of its arbitrators, increase transparency about potential conflicts of interest, and streamline the process by which parties can strike potential arbitrators.[27] FINRA should continue to take steps to ensure that parties in FINRA arbitration have access to a broad range of qualified arbitrators, and that those arbitrators have the training necessary to understand and apply the rules governing the dispute resolution process.

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[24] *See* Notice at 14.

[25] 17 C.F.R. § 240.17a-4(a) ("Every member, broker or dealer . . . must preserve for a period of *not less than 6 years* . . . .") (emphasis added); FINRA Rule 4511.

[26] *See* Books and Records, FINRA.org (last viewed Apr. 24, 2026) ("The recordkeeping rules are intended, in part, to provide regulators with the ability to access and review such records.").

[27] *See* Notice at 16-17; *Order Approving a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Make Clarifying, Technical, and Procedural Changes to the Arbitrator List Selection Process*, SEC Rel. No. 34-103753, 90 Fed. Reg. 41449 (Aug. 20, 2025).

Unlike other forums, FINRA arbitration is dedicated exclusively to disputes arising from the securities and financial services business, which is governed by specific laws, regulations, and rules. At a minimum, FINRA should provide training so that arbitrators have a working understanding of the standards of conduct applicable to broker-dealers and associated persons, including the fundamental pillars of Regulation Best Interest. A greater understanding of these issues would help ensure that arbitrators apply the appropriate legal standards to the facts of each dispute. FINRA should therefore continue to seek arbitrators who have previous legal experience,[28] particularly on the plaintiffs'/claimants' side. Arbitrators with this kind of experience are more likely to understand the nuances of the law and apply legal principles from the perspective of redress for harm done.

The Notice asks whether FINRA should implement additional training requirements for arbitrators beyond the mandatory Basic Arbitrator Training Program, including on substantive elements of law or complex investment products.[29] FINRA should require sufficient training to ensure that its arbitrators are familiar with the elements of common legal claims and defenses likely to be heard. Judges are required to apply the law, juries are provided with jury instructions, and outcomes in court can be appealed to correct legal and procedural errors. Given arbitrators' role as both judge and jury and the extremely limited grounds for review of awards, fairness requires FINRA arbitrators to be sufficiently well-versed to apply the relevant laws and rules to the facts. Like state securities regulators, FINRA has ample experience training and educating staff to understand and apply the securities regulatory framework within which this industry operates. Training neutral FINRA arbitrators to properly apply the relevant laws and rules should not prove to be a heavy burden.

Ensuring that all arbitrators operate under the same general guidelines would also help promote the neutrality and fairness of FINRA arbitration by reducing the likelihood of disparate outcomes for similar cases.[30] While FINRA should generally require its arbitrators to complete such training, we would also support a process by which FINRA could waive the requirement for certain arbitrators during the application process (or as new training modules are implemented) based on the arbitrator's demonstrated experience and skills.

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[28] *See* Notice at 16.

[29] *Id*. at 20, Requests for Comment E.1. through E.4.

[30] Inconsistency could be due to a variety of factors, including limited subject matter expertise in the arbitrator pool in certain regions, or a given arbitrator's feeling or personal opinion about certain cases. Among other issues, NASAA members have observed disparate results among cases involving the same product, including cases involving a complex proprietary strategy that resulted in a Securities and Exchange Commission ("SEC") consent order and $5.8 million in disgorgement. *See* Press Release, SEC, *UBS to Pay $25 Million to Settle SEC Fraud Charges Involving Complex Options Trading Strategy* (June 29, 2022).

V. Arbitrators should be required to provide reasoned, written explanations for their decisions.

Under current FINRA rules, arbitrators are generally not required to provide any explanation of their reasoning for an award, unless all parties jointly request an "explained decision."[31] Even in an explained decision, however, "[i]nclusion of legal authorities and damage calculations is not required."[32] We urge FINRA to take the opposite approach, in which unexplained or conclusory decisions are the exception, rather than the rule. Well-reasoned written awards should be required in all cases, unless specifically declined by both parties after the underlying dispute has arisen.

Each award should include a reasonable explanation of the rationale for the arbitrators' decision. The explanation does not need to be lengthy or overly formal, but it should include, at a minimum, citations to relevant legal authorities and an explanation of how the arbitrators applied the relevant law or rule to the facts of the case. For awards that include damages, this should also include a brief explanation of how the arbitrators determined the amount to be awarded.

Requiring arbitrators to "show their work" in this manner would serve a number of important goals. First, it would improve the quality of FINRA arbitration by incentivizing arbitrators to engage in careful, reasoned decision making and faithfully apply the appropriate legal principles and rules.[33] Second, it would promote confidence in the FINRA forum by demonstrating the quality and thoughtfulness of arbitrators' decision making.[34] Third, it would help courts (or appellate arbitration panels, if FINRA chooses to establish such a process) to correct bad decisions. Although judicial review of arbitration awards is exceptionally narrow, a written explanation would make it easier to identify awards that are so flawed that they should be vacated to ensure a

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[31] FINRA Rules 12904(f), (g), 13904(f), (g); Notice at 30-31. In the expungement context, "[t]he panel must indicate in the arbitration award which of the grounds for expungement identified in [the rules] serve(s) as the basis for its expungement order, provide a written explanation of the reason(s) for its finding that one or more of those grounds apply to the facts of the request, and identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief." FINRA Rules 12805(c)(8)(B), 13805(c)(9)(B).

[32] FINRA Rules 12904(g)(2), 13904(g)(2).

[33] *See*, *e.g.*, *Williamson v. Tucker*, 645 F.2d 404, 411 n.3 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981) (noting that the findings required under Fed. R. Civ. P. 52(a) "insure care on the part of the trial judge in ascertaining the facts").

[34] *See*, *e.g.*, Marilyn Blumberg Cane & Marc J. Greenspon, *Securities Arbitration: Bankrupt, Bothered & Bewildered*, 7 Stan. J. L. Bus. & Fin. 131, 160 (Spring 2002) ("Opinions may also serve an important symbolic function [by] demonstrat[ing] to the parties that the arbitrator thoughtfully contemplated each claim. The parties are more likely to accept the award if they believe the arbitrator put some thought into it."); *Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Require Arbitrators To Provide an Explained Decision Upon the Joint Request of the Parties*, SEC Rel. No. 34-58862, 73 Fed. Reg. 64995, 64996 (Oct. 31, 2008) (stating that "[t]he absence of explanations in awards is a common complaint of non-prevailing parties in the FINRA forum" and describing the findings of a survey which "indicate that 55.5% of customers who responded to the survey would be 'more satisfied if they had an explanation in the award.'").

fair process.[35] Fourth, requiring written explanations would enhance FINRA's ability to monitor the quality of its arbitration panels, correct unacceptable practices or abuses, and design effective arbitrator training programs.

We believe that any impact on the workload of arbitrators or the efficiency of case resolution should be modest. If arbitrators are already engaging in reasoned decision making, it should not require significantly more time or effort to explain their reasoning in writing. Furthermore, the benefits in terms of the fairness and credibility of FINRA arbitration as a dispute resolution forum significantly outweigh any potential burdens. In light of the virtual impossibility of overturning an arbitration decision, efficiency should not be viewed as a counterpoint to the obligation to engage in thorough, well-reasoned decision making.

VI. FINRA should further enhance its rules for expungement claims.

The Central Registration Depository ("CRD") is the primary repository of the registration records of broker-dealer firms and their agents, as well as individuals registered as investment adviser representatives under state securities laws. The information filed on Forms U4 and U5 is extremely valuable to state securities regulators to meet their regulatory obligations. It is also an official record of each state with which the relevant form was filed, subject to state laws on record retention and public access. Accordingly, information should only be deleted from CRD in extraordinary circumstances in which it is clearly inaccurate.[36] While FINRA has made improvements to the process in recent years and established important safeguards (the "2023 Rule Changes"),[37] ensuring that expungement is extraordinary relief should remain paramount and is an ongoing undertaking. Notwithstanding our preference for a regulatory process for expungement decisions instead of allowing such decisions to be made by arbitrators, we offer the following suggestions to further enhance the expungement process.

Expungement is fundamentally unlike other claims adjudicated in the FINRA forum. In many cases, the associated person faces no true adversary. Customers typically have little interest in the integrity of public records and regulatory information, nor should protecting those interests be any customer's responsibility. The firms named as respondents in straight-in proceedings under the Industry Code likewise often have no meaningful incentive to oppose an expungement request. Furthermore, the removal of records from CRD directly affects the interests of third parties, *i.e.*, the permanent deletion of valuable regulatory information and, in many cases, official state records that are subject to state laws on retention and public access. Therefore, treating expungement claims differently from bona fide substantive disputes makes sense.

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[35] *See supra*, note 4; *Dawahare v. Spencer*, 210 F.3d 666, 669 (6th Cir. 2000) ("If [arbitrators] choose not to [explain their decisions], *it is all but impossible* to determine whether they acted with manifest disregard of the law.") (emphasis added, internal citation omitted).

[36] *See* FINRA Rules 12805(c)(8)(A), 13805(c)(9)(A).

[37] *See* Regulatory Notice 23-12 (Aug. 11, 2023).

Despite the 2023 Rule Changes, many expungement hearings remain one-sided. In the experience of NASAA members, arbitrators continue to grant expungement under ordinary, rather than extraordinary circumstances; FINRA member firms regularly choose not to appear, or they appear in support of the associated person requesting expungement (or without opposition to the request);[38] and relevant information, including books and records that firms are legally required to maintain, is not presented to the panels.

FINRA should further enhance its rules[39] to require that the person making a straight-in expungement claim, and the named firm, proactively upload all relevant documents, including all documents produced or used in the underlying customer dispute, to the Dispute Resolution Portal without requiring the panel to first request the information. The list of required documents should be based on FINRA's Discovery Guide, which includes presumptively discoverable records that would be relevant in an underlying arbitration claim by the customer.[40] While not sufficient on its own, it should always be the case that the arbitrators considering an expungement request are provided with the entirety of the record associated with the underlying customer dispute. This should include all evidence exchanged in discovery or provided to a court in the underlying litigation or to the arbitrators in an underlying arbitration case, as well as the firm's or associated person's records related to a non-litigated customer complaint (including documents and communications associated with any settlement). The requirement would not be unduly burdensome, as firms keep the listed documents in the ordinary course of business pursuant to applicable rules.[41] The Discovery Guide is a natural reference point, as the underlying conduct in most expungement proceedings is indisputably about customer interactions. The panel would address any objections and would retain discretion as to which documents are admitted into evidence during a hearing. Requiring automatic production as described here would assist in keeping expungement proceedings efficient and cost effective by ensuring that the panel can efficiently access the relevant documents.[42]

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[38] The situation is worse when the associated person also owns or controls the firm, making the arbitration truly one-sided. Dialectic conflict between two sides, presented to a neutral decision maker, is a bedrock principle of our legal system. FINRA arbitration should, at minimum, reflect that principle.

[39] *See* FINRA Rules 12805(c)(6), 13805(c)(7).

[40] *See* FINRA, Discovery Guide, 1 (2013); FINRA Rule 12506.

[41] *See* FINRA Rule 4511; 17 C.F.R. § 240.17a-4; FINRA, *Books and Records Requirements Checklist for Broker-Dealers* (last visited April 22, 2026).

[42] *See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Discovery Guide and Rules 12506 and 12508 of the Code of Arbitration Procedure for Customer Disputes*, SEC Rel. No. 34-64166, at 4 (Apr. 1, 2011) (explaining that the Discovery Guide "[is] comprised of language that was discussed at length with [FINRA's constituents, including investor and industry representatives, arbitrators, and attorneys that handle investor claims at securities arbitration clinics] and crafted to balance the parties' discovery needs with the goal of keeping FINRA arbitration efficient and cost effective . . . .").

Following the 2023 Rule Changes, some practitioners have begun to circumvent those safeguards by pursuing expungement in non-FINRA arbitration forums.[43] Unlike other circumstances in which it may be acceptable to allow parties to take bona fide disputes to non-FINRA forums by mutual agreement, expungement relief should only be available in the FINRA forum. The necessity of the 2023 Rule Changes proves that expungement cases do not belong in any forum that lacks the specialized procedures that apply to those cases in the FINRA forum, particularly given that expungement cases are usually not bona fide disputes. We have previously noted our concern with allowing arbitrators to decide expungement requests. That concern is heightened in the context of non-FINRA forums. Given that expungement is currently handled through arbitration, such proceedings should take place in the FINRA forum, where FINRA can ensure that arbitrators receive appropriate training and apply the proper rules and legal standards to the request for extraordinary relief.[44] FINRA's ability to make such training de rigueur and, more importantly, its discretion to remove arbitrators from its roster further strengthen the case for forum exclusivity. While other forums have an economic incentive to keep "repeat customers" happy, FINRA's authority and discretion in the FINRA forum provides a heavy incentive to properly apply the relevant standards.

While FINRA arbitrators complete training on the expungement process, they should also be required to complete more rigorous training on the standards for awarding such extraordinary relief. In addition to being informed about what the relevant standards are, FINRA arbitrators should be trained to apply those standards strictly.[45] Arbitrators should understand that "factually impossible," "clearly erroneous," and "false" are high bars, and that none of those standards are met by the absence of opposing evidence, or the arbitrators' assessment that any negative impact of disclosure on the associated person may outweigh the benefit to regulators or the public. Neither the absence of evidence nor the perceived balance of interests is a valid reason to expunge regulatory information from CRD. Arbitrators should also understand that their role is to assess whether the person requesting expungement has established any of the applicable grounds for expungement, not to independently assess the relative "value" of the information to regulators, the investing public, or any other non-party.[46] It is also important that arbitrators understand the nature

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[43] *See* Miriam Rozen, *Brokers Seek to Circumvent FINRA's Tightened Expungement Rules*, AdvisorHub (May 29, 2024).

[44] FINRA should not allow firms to request the removal of customer complaint disclosures from an associated person's U4 without a formal expungement proceeding based on a firm's assessment that it is "demonstrably false," as suggested in previous industry comment letters. *See* Notice at 35-36 n.263 and accompanying text. To the extent that any disclosure is indeed "demonstrably false," the burden of an expungement hearing should be light. The fact that some customer complaint disclosures meet the criteria for expungement under FINRA rules is no reason at all to eschew the very process designed to make those determinations.

[45] *See* FINRA Rules 12805(c)(8)(A)(i), 13805(c)(9)(A)(i).

[46] The idea that information should be removed from CRD when it "holds no regulatory value," *see* *Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System*, SEC Rel. No. 34-48933, 68 Fed. Reg. 74667, 74672 (Dec. 16, 2003), is not an independent basis for expungement. Moreover, arbitrators should not be making decisions about the regulatory value of information, period.

of state securities regulators' interest in the information found in CRD when they participate in straight-in cases. The Basic Arbitrator Training Program should emphasize that states are not simply passive users of CRD, but have a direct proprietary interest in the information in the database because Forms U4 and U5 are filed with the states, as well as with FINRA.

While we understand FINRA's desire to remain a "neutral administrator" of the forum and "not [to] have any input into the outcome of arbitrations,"[47] we would not agree with any suggestion that FINRA would be compromising its neutrality or having "input into the outcome" by providing clear training and instruction to its arbitrators. Arbitrators should be independent decision makers, but they must make those decisions based on a reasoned application of established standards and criteria, not whims or personal beliefs. Training arbitrators on their role and the substantive standards that they must apply to the disputes before them in no way compromises the independence of their decisions.

Finally, we strongly encourage FINRA to monitor and scrutinize expungement awards to ensure that its arbitrators provide thoroughly reasoned explanations when awarding expungement relief, as required under FINRA rules.[48] Although the 2023 Rule Changes granted state securities regulators the right to participate in straight-in proceedings and receive notice of expungement requests made within a customer-initiated arbitration,[49] state securities regulators have never agreed to arbitrate those issues in the FINRA forum or to be bound by awards in proceedings to which they are non-parties.[50] Given the extremely limited recourse for errors or poor judgment by arbitrators, and the magnitude and complexity of the interests involved, it is essential that expungement awards be accompanied by detailed written explanations of the panels' decisions.

VII. FINRA should take steps to preserve valuable termination disclosures on Form U5.

The Notice broadly seeks feedback about how FINRA should address certain issues related to defamation claims regarding Form U5 employment termination disclosures. While discussion about the removal of information from CRD most commonly focuses on information about customer disputes, Form U5 termination disclosures are an equally valuable source of information for state securities regulators to protect investors. In one example, the disclosure that two individuals had been "permitted to resign" from their former broker-dealer "while under internal review for violation of firm policy" ultimately led state securities regulators in Ohio to uncover

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47 *See* Notice at 35 n.260.

48 *See* FINRA Rules 12805(c)(8)(B), 13805(c)(9)(B).

49 FINRA Rules 12805(b), 13805(c)(6).

50 To the extent that state securities regulators or their representatives participate in expungement proceedings as provided in the 2023 Rule Changes, they are effectively forced into the FINRA forum because FINRA rules continue to allow expungement decisions to be outsourced to arbitrators instead of "an administrative process for disputing the accuracy of information [in CRD]," *see* 15 U.S.C. § 78o-3(i)(3).

their alleged involvement in a $72 million Ponzi scheme.[51] FINRA should take steps to preserve such information and ensure that it is not removed from CRD except in extraordinary circumstances.

The Notice asks how "the regulatory need for the reporting of complete and accurate information to CRD" should be balanced with firms' concerns about potential defamation liability and associated persons' "expectation for recourse" for information they believe to be false or misleading.[52] While we acknowledge that firms are concerned about potential liability and associated persons may have a different view of the facts, the interests should always be balanced in favor of the regulatory need for complete and accurate information. There may be value in considering steps to limit firms' liability, the relief that can be awarded (*i.e.*, limited to expungement if warranted under existing criteria), or the information that is disclosed to the broader public via BrokerCheck, and NASAA may comment on such proposals if and when they are presented by FINRA. But the solution should never be to permit incomplete, inaccurate, or misleading disclosure to regulators about the nature and circumstances of termination.

Next, the Notice asks whether FINRA should require arbitrators to find falsity, bad faith, and actual malice before awarding monetary damages for Form U5 defamation claims.[53] NASAA would support such a requirement. The risk of liability creates an incentive for firms to negotiate the substance of the firm's mandatory regulatory disclosures about the termination. Whether due to negotiation or preemptive caution by the firm, this can introduce unnecessary inefficiencies into the registration/licensing process. Since firms are not required to file Form U5 until 30 days after termination,[54] the termination disclosure sometimes does not arrive until after the person's registration has been allowed at a new firm.[55] At this point, it is more burdensome on regulators, the new firm, and the associated person for the state to take appropriate action to protect investors, such as by imposing heightened supervision or other conditions. Inaccurate or opaque disclosures could compound the burden by requiring the regulator to request more information before deciding

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[51] *See* Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Douglas S. Miller, CRD No. 1946240*, Order No. 17-013 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017), available at https://finalorders.com.ohio.gov/; Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Gary L. Rathbun, CRD No. 1084721*, Order No. 17-012 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017), available at https://finalorders.com.ohio.gov/; Ohio Atty. Gen., Press Release, *Reindictment Filed in Investment Case* (July 17, 2024); Ohio Atty. Gen., Press Release, *Second Defendant Pleads Guilty in Decade-long Ponzi Scheme* (Jan. 6, 2026).

[52] Notice at 37, Request for Comment L.1.

[53] *Id*., Request for Comment L.2.

[54] *Form U5*, FINRA.org ("When Must a Form U5 Be Filed?").

[55] This can happen for any number of reasons, including an otherwise clean record (or artificially clean, due to expungement), misstatements by the applicant about the circumstances surrounding their departure, or constrained statutory or regulatory deadlines for a state to take action on an application.

on an appropriate course of action. This kind of delay helps no one. Accordingly, we support raising the legal standard for monetary damages in Form U5 defamation claims.

The Notice also asks whether FINRA should provide guidance, training, or instructions to arbitrators on the substantive elements of defamation claims.[56] While arbitrators do not necessarily need to have legal expertise to hear such claims, they should be provided training, guidance, and instruction on the elements of a defamation claim. Such training, guidance, and instruction are particularly important to the extent that FINRA continues to remove Form U5 information from CRD without a court order. FINRA has made clear that its arbitrators "are not required to state explicitly in the award that they have found all elements required to satisfy a claim in defamation under governing law have been met."[57] Before adjudicating expungement claims, FINRA arbitrators should be trained on the substantive elements of defamation and common defenses. They should also be guided or instructed that, while they do not need to find liability[58] or discrete state-specific elements, they must find, at a minimum, that the associated person has shown the elements of factual falsity, fault amounting to at least negligence, and some non-speculative harm to the associated person or their professional reputation. This would likely help to improve the quality and consistency of decisions in this area.

The improvements discussed above are even more important in light of the fact that FINRA does not require a court order to remove Form U5 termination information from CRD if the panel explicitly states that the information is of a "defamatory nature." The Notice asks whether FINRA should retain this position. We respectfully encourage FINRA to reconsider its views on this practice. Form U5 termination information should not be removed from CRD except under extraordinary circumstances and those decisions should be subject to a process at least as rigorous as the process for customer dispute information. As an initial matter, it is not clear that there is any basis in FINRA rules for expungement of termination information in Form U5 that does not involve a request to remove customer dispute information.[59] We are concerned about a lack of transparency as to when and how often FINRA deletes information in these cases. These awards should be subject to at least the same confirmation requirements as other expungement awards. Arbitrators should also be required to explain their reasoning, in writing, including citations to relevant legal authority and how they determined that the key elements described above have been

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[56] Notice at 37, Request for Comment L.3.

[57] *Id*. at 36-37.

[58] This could be impossible in some cases because the doctrines of qualified or absolute privilege may preclude liability in some jurisdictions. *See*, *e.g.*, *Moreland v. Perkins, Smart & Boyd*, 240 P.3d 601, 608 (Kan. Ct. App. 2010) (collecting cases).

[59] *See* FINRA Rules 2080 (titled, "Obtaining an Order of Expungement of *Customer Dispute Information* from the Central Registration Depository (CRD) System"), 12805 (stating that "[t]his Rule applies to all requests to expunge *customer dispute information* from CRD system" and "[a]n associated person named as a respondent in an investment-related, customer-initiated arbitration may request expungement during the arbitration of the *customer dispute information* associated with the customer's statement of claim"), 13805 (stating that "[t]his Rule applies to all requests to expunge *customer dispute information* from CRD system" and "[a]n associated person may request expungement of *customer dispute information* . . . .") (emphases added).

established. If FINRA elects to retain this position, it should require arbitrators to explicitly find both falsity and actual malice.

VIII. FINRA should provide training to arbitrators and limit expungement relief in investment adviser arbitrations.

In addition to disputes involving FINRA member firms and their associated persons, "FINRA [also] accepts investment adviser related disputes in its arbitration forum on a voluntary, case-by-case basis[.]"[60] Notwithstanding our preference for an end to the industry practice of requiring pre-dispute arbitration clauses, we offer the following comments regarding arbitration involving investment advisers in the FINRA forum.

First, we generally support FINRA's conditions for accepting such disputes in the FINRA forum, including the assurance that advisory clients will receive the same protections in those disputes as brokerage customers receive under the Customer Code.[61] Second, arbitrators who adjudicate those cases should have the experience, training, and guidance to do so in accordance with applicable law. Before hearing adviser-client disputes, arbitrators should be required to receive training about the relevant legal standards and rules that apply to investment advisers, the services that investment advisers provide and how they are compensated, and the fiduciary nature of the adviser-client relationship. The required training should explain the ways in which the foregoing differ from similar concepts applicable to broker-dealers, their agents, and their customers.

Finally, FINRA should further limit the availability of expungement relief in these proceedings. FINRA currently prohibits requests to expunge "information maintained in the Investment Adviser Registration Depository (IARD)" in investment adviser arbitration proceedings.[62] While this is appropriate, FINRA should prohibit all expungement requests in any dispute that arises under, or comes to the FINRA forum pursuant to, an advisory contract or relationship, regardless of whether the information is located in IARD or CRD. Since any such dispute stems from an advisory relationship, the dispute and any related disclosures made on Forms U4 and U5 are matters of investment adviser, not broker-dealer, regulation. This is true even if the investment adviser is also a FINRA member firm or affiliated with a FINRA member firm, the investment adviser representative is also a registered person of a FINRA member firm, or the allegations relate to investments and transactions effected in a brokerage account. It is the nature of the dispute, not the dual-hatted nature of the person or firm, that should control. Since FINRA does not regulate investment advisers or investment adviser representatives in those capacities, FINRA should not permit its arbitrators to make expungement decisions about information related to such adviser-client disputes.

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60 Notice at 38 n.275.

61 *See* Guidance on Disputes between Investors and Investment Advisers that are Not FINRA Members, FINRA.org (last visited Apr. 22, 2026).

62 *Id.*

IX. FINRA should neither remove nor redact awards in the AAO database.

Currently, all FINRA arbitration awards are publicly available, free of charge, in its Arbitration Awards Online ("AAO") database.[63] The Notice asks whether FINRA should change its rules so that it can remove awards from AAO or redact information in them, under what circumstances it would be appropriate to do so, and the potential impact of removal or redaction on transparency into FINRA's arbitration process.[64] With the possible exception of arbitration awards that have later been vacated by a court of competent jurisdiction under the Federal Arbitration Act, FINRA should not remove or redact awards from AAO under any circumstances, and NASAA would oppose any such reversal by FINRA.

AAO is an important source of information for regulators, attorneys, investors, compliance and human resources departments, journalists, and academic researchers, among others. Given that most securities industry disputes are resolved in FINRA arbitration, AAO is a critical historical record of those disputes and their outcomes. The removal or redaction of such information would significantly undermine the credibility and transparency of FINRA's arbitration process and deprive the public and the industry alike of valuable information.

This is particularly true for expungement awards and awards in which the arbitrators granted motions to dismiss. Once expungement is effected by FINRA, the customer dispute information is no longer in CRD or on BrokerCheck. The expungement award is the last reference to the fact that an associated person had a customer complaint or allegation against them at all. At a minimum, the investing public deserves to know that a complaint or other dispute information was removed, how, and why. Removing or redacting awards from the AAO would benefit nobody except for individual associated persons, and the extent of that benefit is questionable. The argument that firms, associated persons, or the investing public are somehow harmed by the publication of awards in which the arbitrators granted expungement or a motion to dismiss is particularly baffling.[65] In those cases, the individuals received an award indicating that the complaint or allegation was dismissed or that the arbitrator(s) agreed that the customer dispute information should not appear in CRD.[66] Regulators routinely advise investors to check the backgrounds of financial professionals before entrusting those people with their money. For those same regulators to then deprive investors of information by facilitating the removal of such information from publicly-available databases is problematic. Further, the possibility that potential customers may find the complaint or allegation significant, in spite of its dismissal or expungement, demonstrates why those awards should be publicly available and easily accessible, not that they should be hidden from public view.

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63 *See* Notice at 32.

64 *Id.* at 32, Request for Comment J.2.

65 *See id*. at 32 n.242 (letters cited).

66 If anything, these arguments advanced by other commenters support our recommendation, above, that FINRA require written explanations in all arbitration awards. *See supra*, 8-9.

X. FINRA should continue to explore ways to prevent unpaid arbitration awards.

The issue of unpaid arbitration awards is well-known. Although NASAA has been a longstanding proponent of measures to redress this problem, unpaid awards remain an unresolved and well-documented investor protection concern. While there is no silver bullet to fix the problem, we remain committed to working with FINRA to find a solution.

In the Notice, FINRA states that it received feedback that it "should require any individual or entity that owns or controls a FINRA member to submit to FINRA jurisdiction; mandate that holding companies and control persons participate in FINRA arbitration pursuant to Rule 12200 where they are alleged to have responsibility for customer harm; and prohibit associated persons, owners and control entities from remaining in the industry if they are affiliated with firms that fail to pay arbitration awards."[67] We encourage FINRA to fully explore these options. NASAA remains committed to working with FINRA to find solutions to the problem of unpaid arbitration awards.

XI. Conclusion

NASAA appreciates the opportunity to comment again on the Notice. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Marni Rock Gibson
NASAA President and
Commissioner, Kentucky Department of
Financial Institutions

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67 Notice at 35.