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Invested in America

May 1, 2026

VIA ELECTRONIC SUBMISSION

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

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

Dear Ms. Piorko Mitchell,

The Securities Industry and Financial Markets Association[1] ("SIFMA") submits this letter to the Financial Industry Regulatory Authority ("FINRA") in response to Regulatory Notice 26-06 (the "Notice"), which seeks public comment on modernizing FINRA arbitration rules, guidance, and processes.[2] We note that this response is intended to supplement SIFMA's July 2025 letter to FINRA providing recommendations for improving the FINRA arbitration forum.[3]

As stated in our July 2025 letter, SIFMA strongly supports efforts by FINRA to improve its arbitration forum, and we believe reform is needed to preserve the benefits of the FINRA arbitration process. Our recommendations are designed to improve the overall fairness and efficiency of the forum for all stakeholders, and, above all, ensure investor protection.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

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

[3] SIFMA Letter, *Recommendations for FINRA Arbitration* (July 11, 2025), https://www.sifma.org/wp-content/uploads/2025/07/SIFMA-Letter-to-FINRA-re-Arbitration-2025.07.11.pdf.

Executive Summary

Nearly all disputes between broker-dealers, associated persons, and customers are resolved in FINRA's arbitration forum. Given the forum's central role in the securities industry, it is essential that it operates efficiently and delivers fair and predictable outcomes to all participants. FINRA's arbitration forum currently provides a reasonably efficient and cost-effective process for resolving disputes. But as markets evolve and disputes become more complex, FINRA must adapt and implement necessary reforms to meet the needs of an ever-changing industry. By doing so, FINRA can strengthen confidence in its arbitration forum and reinforce its role as a trusted mechanism for dispute resolution.

Consistent with these principles, SIFMA is proposing that FINRA take action to reduce inefficiencies and improve the fairness of FINRA arbitration. As detailed herein, SIFMA makes the following recommendations for each of the areas on which FINRA requested comment:

- **Forum Selection:** Permit agreements to resolve certain narrow categories of claims outside the FINRA arbitration forum, such as high-value claims, claims by institutional investors, and intra-industry disputes, which do not give rise to traditional investor protection concerns.

- **Punitive Damages:** Permit parties to set reasonable limits on punitive damages that are consistent with applicable law in order to promote consistency and predictability, particularly given the limited bases for appealing arbitration awards.

- **Form U5 Defamation Claims:** Establish clear requirements for the adjudication of Form U5 defamation claims, provide guidance, training, and instructions to arbitrators on those requirements, and provide member firms with qualified immunity for Form U5 statements required by industry rules.

- **Eligibility and Motions to Dismiss:** Amend the rules governing eligibility and dismissal of claims to address threshold issues sooner and avoid the unnecessary expenditure of resources.

- **Arbitrator Qualifications, Classifications & Selection, and Training:** Continue to strengthen arbitrator quality and accountability, including through additional training, fair compensation, and effective oversight, which could improve confidence in the arbitration process, particularly as cases grow more complex.

- **Discovery and Hearing Oversight/Efficiency:** Update the rules governing discovery and hearing management to keep cases moving in a timely and cost-effective manner.

- **Explained Decisions in Awards:** Do not require explained decisions in arbitration awards. Doing so would only make the process less efficient, without meaningful evidence of commensurate benefits to parties.

- **Unpaid Awards:** Do not create an industry-funded customer recovery pool. Such a system would be ripe for abuse and would unfairly place the burden of unpaid arbitration awards on the firms who do pay their awards, and ultimately, on their customers. SIFMA continues to support targeted efforts that ensure firms pay their arbitration awards in full.

- **Arbitration Awards Online (AAO):** Maintain the current rules governing the AAO database and continue to permit the publication of awards (without redaction) on AAO.

I. Forum Selection

A. *Customer Disputes*

As SIFMA has previously advocated, FINRA should allow parties to resolve certain narrow categories of customer claims outside of the FINRA arbitration forum. Specifically, FINRA should revise Rule 12200 to permit firms to contractually agree to opt out of FINRA arbitration and select an alternative forum for two specific, limited categories of cases: (i) those seeking damages over a defined, high-dollar threshold; or (ii) those involving counterparties that are considered "institutional investors" pursuant to Rule 2210(a)(4).

These are precisely the types of claims that many stakeholders recognize are not well suited for the FINRA arbitration forum.[4] They do not raise the same investor protection concerns as traditional retail disputes, and they generally involve complex legal and discovery issues that other forums are better equipped to resolve. Thus, permitting limited flexibility could benefit all stakeholders and free up FINRA's limited resources for the types of investor claims for which FINRA arbitration is better-suited.

Because only a small subset of FINRA arbitration claims would meet the threshold, the proposed change would apply to relatively few cases and would not be expected to materially alter the overall volume of cases administered by the FINRA arbitration forum. This is supported by FINRA's arbitration statistics, which show that for customer cases filed in FINRA's arbitration forum from January 2016 through June 2025, only approximately 1% involved claims seeking more than $10 million.[5]

Alternatively, the Notice seeks comment on whether these categories of claims should be subject to different procedural and/or arbitrator qualification requirements. We do not believe FINRA's suggested changes would address the concerns here. We have seen this firsthand when

[4] *See* FINRA Dispute Resolution Task Force, *Final Report and Recommendations of the FINRA Dispute Resolution Task Force* (Dec. 2015), at 30, https://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf ("It is generally recognized that large and complex cases present 'special and often unique problems . . . which require greater procedural flexibility.' Two related concerns have been expressed about the increase in large claims: whether the forum is meeting the needs of the parties and whether these cases place a disproportionate burden on the forum.").

[5] *See* FINRA Regulatory Notice 26-06, *supra* note 2, at 9.

FINRA has attempted to implement similar programs in the past. These programs were largely underutilized, and therefore unsuccessful, because they required the consent of all parties.[6]

The Notice also seeks comment on customers being allowed to "unilaterally choose, post-dispute, between arbitration and litigation even if they signed a customer agreement with an alternative forum selection clause." SIFMA strongly opposes any changes that would undermine the terms of their contractual predispute arbitration agreements and essentially render them useless. Under FINRA's rules customers already have the unilateral right to request arbitration even in the absence of a predispute arbitration agreement. There is no reason to also permit additional unilateral permissions that override an agreement to arbitrate. Thus, the rules should remain the same: if the contract contains a predispute arbitration agreement, all parties need to agree to resolve their dispute in litigation rather than arbitration.

B. *Industry Disputes*

FINRA should also modify the requirements for arbitrating industry disputes under Rule 13200. Specifically, FINRA should amend Rule 13200 to permit parties to enter into predispute arbitration agreements that waive the requirement to arbitrate in a FINRA forum and permit arbitration in an alternative forum, subject to the limited exceptions described below.

We believe these revisions are appropriate given the intra-industry nature of the disputes covered by this Rule. In industry disputes, forum selection clauses simply do not give rise to the same investor protection concerns as in customer cases. Industry disputes also tend to involve more complex claims that seek higher damages. FINRA has not identified any justification for treating industry and customer claims the same and requiring that industry disputes be arbitrated at FINRA.[7]

We would, however, propose carving out two categories of arbitrations from our recommended amendments to Rule 13200, which are: (1) simplified arbitrations involving $50,000 or less covered by Rule 13800; and (2) promissory note proceedings covered by Rule 13807. We think these cases are best suited for resolution in the FINRA arbitration forum and recommend that FINRA continue to require them to be brought there.

II. Punitive Damages

FINRA should amend Rule 2268(d)(4) to permit parties to agree in their predispute arbitration agreements to preclude or limit arbitrators from awarding punitive damages, consistent with applicable state law. Recent high-value punitive damages awards issued by FINRA arbitration panels have renewed longstanding concerns about whether punitive damages should be permitted in FINRA arbitration. As we previously addressed in our July 2025 letter,

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[6] *See id.* at 9, n.59 (discussing pilot programs for large and complex cases that were launched in 1995 and 2012, which required the consent of all parties to participate and were opted into by very few parties).

[7] FINRA's only justification for prohibiting forum selection clauses under Rule 13200 is that "FINRA Rule 13200 specifically states that industry disputes must be arbitrated at FINRA, except as otherwise provided in the Industry Code." *See* FINRA Regulatory Notice 16-25, *Forum Selection Provisions Involving Customers, Associated Persons and Member Firms* (July 22, 2016).

numerous policy and practical arguments support limiting the ability of FINRA arbitrators to impose punitive damages.

First, FINRA arbitration lacks the necessary procedural safeguards for awarding punitive damages. Punitive damages awards by FINRA arbitration panels are final and binding. The general grounds for appealing an arbitration award are extremely limited, making it very difficult to overturn even an obviously unreasonable arbitration award. Despite this absence of meaningful oversight or guidance, FINRA arbitration panels are given unfettered authority when determining whether to award binding punitive damages.

FINRA's arbitrator guidance and training also lacks guardrails to ensure the appropriateness of punitive damages awards. These materials mention the existence of varying legal standards for awarding punitive damages, yet they fail to provide arbitrators with any direction for how to assess their applicability. While a party is permitted to assert the defense that punitive damages are not permitted by the law governing the parties' agreement, FINRA instructs arbitrators that the ultimate decision to award them is in the arbitrator's discretion,[8] and more broadly, that they are "not strictly bound by legal precedent or statutory law."[9] Unsurprisingly, these guidelines lead to unpredictable and inconsistent punitive damages awards in FINRA arbitration.

The Notice cites to feedback that FINRA should not limit punitive damages because "if customers are forced to bring their claims against the securities industry in arbitration, the arbitrators should be entitled to award any relief the customers would be entitled to if their claim was filed in court."[10] But this argument demonstrates precisely why punitive damages awards should be limited: FINRA arbitration lacks any of the procedural safeguards around such awards that would exist in court. At a minimum, a jury considering whether to award punitive damages is instructed on the governing law, and any such award is subject to post-trial and appellate review. FINRA arbitrators, on the other hand, have none of these guardrails, yet are given unlimited power to award this extraordinary remedy, effectively giving them more discretion over punitive damages awards than both judges and juries.

Second, punitive damages awards by FINRA arbitrators are unnecessary to punish wrongdoing and deter future misconduct in the securities industry. FINRA arbitrators already have a sufficient – and arguably more effective – way of achieving punishment and deterrence goals: they can refer cases to FINRA Enforcement for disciplinary proceedings. Moreover, the highly regulated nature of the industry renders punitive damages awards unnecessary. Not only are firms regulated by FINRA, but they are also subject to the enforcement regimes of numerous

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[8] *See* FINRA DRS, *Basic Arbitrator Training Program Transcript* (Jan. 2026), at 62, https://www.finra.org/sites/default/files/2024-05/FINRA-Basic-Arbitrator-and-Expungement-Training-Full-Course-Transcript.pdf (stating that "[p]anels have discretion in punitive damages and may award them if claimant requests them and the respondent has engaged in serious misconduct meeting the standards for award and any arbitration forum rules").

[9] *See* FINRA, *FINRA Dispute Resolution Services Arbitrator's Guide* (Mar. 2026), at 65, https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

[10] *See* FINRA Regulatory Notice 26-06, *supra* note 2, at 29 & n.217.

federal and state regulators. These regulators have a variety of available remedies that adequately address perceived wrongdoing and deter misconduct, including, but not limited to, civil monetary penalties.

Third, there is no compelling reason for FINRA's rules to prohibit parties from contractually excluding or limiting punitive damages awards in arbitration where such agreements are permitted by state law. There is nothing extraordinary about parties contracting out of punitive damages in arbitration, and courts will generally enforce such agreements where the agreement clearly expresses the parties' intent to exclude these claims from the arbitrator's purview.[11]

Fourth, limiting punitive damages is a low-impact, high-reward solution. As stated in the Notice, punitive damages are awarded only in a very small percentage of FINRA arbitration cases (approximately 3% of cases over a 38-year period).[12] But even the small possibility of an outsized award has incentivized claimants to assert punitive damages in the vast majority of arbitration cases, particularly given the lack of predictability and guidance in this area. Thus, continuing to allow arbitration awards to go unchecked presents an extremely significant threat to firms, regardless of the number of cases in which they are awarded. Limiting the ability to award punitive damages would impact very few cases, while avoiding the small number of high damages cases that undermine the fairness of the forum.

For the reasons above, SIFMA recommends that FINRA permit limitations on punitive damages. Alternatively, at the very minimum, FINRA should consider imposing a recovery cap on punitive damages awards (e.g., requiring awards to be below a certain defined threshold and/or tied to a multiple of any compensatory damages award).

The Notice seeks comment about potential steps it can take to address punitive damages awards, none of which we believe address the multitude of issues set forth above. This is particularly true for FINRA's most detailed proposal, the development of an appeals process for punitive damages awards. Not only would such an appeals process exacerbate the lack of procedural safeguards and meaningful oversight that currently plague these awards, but it would also lead to less efficiency by delaying the resolutions of FINRA arbitrations. An appeals process would also be a drain on FINRA's already-limited resources, as it would require, at a minimum, the creation of both an entirely new framework to govern the process and a roster of arbitrators to hear the cases. Finally, an appeals process could open the door to appellate review in a broader set of circumstances, or at the very least, arguments from claimants attempting to do so, further complicating the resolution of FINRA arbitrations.

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[11] *See Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 58 (1995) (stating that the Court's decision on whether a New York choice-of-law provision precluded an arbitral award of punitive damages came down simply to "what the contract has to say about the arbitrability of petitioners' claim for punitive damages"); *see also Flintlock Construction Services, LLC v. Weiss*, 122 A.D.3d 51, 54-56 (1st Dept. 2014) (stating that an arbitration agreement that expressly invokes New York's prohibition on arbitral punitive damages awards, or expressly excludes claims for punitive damages, would be enforceable).

[12] FINRA Regulatory Notice 26-06, *supra* note 2, at 28.

III. Form U5 Defamation Claims

In February 2024, SIFMA submitted a letter expressing significant concerns with the adjudication of Form U5 defamation claims in FINRA arbitration.[13] We continue to urge FINRA to address this issue and minimize firms' exposure to unfounded Form U5 defamation claims, which arises only as a result of their compliance with disclosure obligations.

The starting point for this issue is FINRA's Form U5 filing requirement. Form U5 requires specific disclosures regarding an associated person's termination of employment, and firms have an obligation to provide "complete and accurate" information.[14] But, if a Form U5 contains allegedly untrue or misleading statements, FINRA permits an associated person to file a FINRA arbitration claim, seeking: (i) expungement of the Form U5 information; and (ii) monetary damages against the firm under state law for defamation and/or wrongful termination.

For non-customer dispute information, if arbitrators recommend expungement relief and also determine the information is "defamatory in nature," FINRA will expunge the information without a court order. [15] Meeting this standard, however, does not require establishing the requisite elements of a defamation claim; FINRA's guidance explicitly states that arbitrators are "not required to find or to state explicitly in the award" that all elements required to satisfy a defamation claim under governing law have been met.[16] While the Notice states that FINRA's arbitrator guidance on defamation claims is limited to the expungement context, it is silent on FINRA's guidance to arbitrators for adjudicating actual claims for defamation – which would be the appropriate standard for money damages awards – and to our knowledge no such guidance exists.[17]

In recent years, firms have faced unpredictable and outsized damages awards in FINRA arbitration for Form U5 defamation claims.[18] Given the high bar for establishing an actual

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[13] *See* SIFMA Letter, *Form U5 Defamation Claims for Money Damages: Recommendations to improve the fairness of adjudications* (Feb. 20, 2024), https://www.sifma.org/wp-content/uploads/2024/02/SIFMA-Letter-to-FINRA-re-U5-defamation-claims-220.2024.pdf; *see also* SIFMA July 2025 Letter, *supra* note 3, at 5-6.

[14] FINRA Regulatory Notice 10-39, *Obligation to Provide Timely, Complete and Accurate Information on Form U5* (Sept. 8, 2010).

[15] To our knowledge, there is limited FINRA guidance on this definition, but FINRA's expungement training from 2014 states that information in a broker's CRD record would be "defamatory in nature" if it "portray[ed] the broker in a negative light." *See* FINRA, *Dispute Resolution Training and Exam: Expungement* (Sept. 2014), at 22, https://www.finra.org/sites/default/files/FINRA%20ExpungementTraining%20%28September%202014%29.pdf

[16] *Id.*; *see also* FINRA, The Neutral Corner Vol. 2 (2013), https://www.finra.org/sites/default/files/Publication/p290794.pdf.

[17] *See* FINRA Regulatory Notice 26-06, *supra* note 2, at 36-37 (emphasis added).

[18] *See, e.g.*, FINRA Award, Case No. 22-00681 (Jan. 5, 2024), in which a FINRA arbitration panel awarded more than $500,000 for a Form U5 defamation claim, which was followed – only two months later – by the same claimant entering into a FINRA AWC for the same alleged misconduct described on the Form U5. *See* FINRA AWC No. 20210726011101 (Mar. 12, 2024).

defamation claim, these awards understandably raise significant concern that arbitrators are resolving actual defamation claims and awarding corresponding money damages using an incorrect legal standard, like the more lenient "defamatory in nature" standard. These concerns are exacerbated by the fact that FINRA arbitrators receive no training or guidance on the proper standard to apply to these claims.

A. *FINRA Should Incentivize Complete and Accurate Form U5 Reporting*

Above all, FINRA should encourage accurate and complete Form U5 reporting by firms. In the current environment, firms who make robust Form U5 disclosures are most at risk of facing unfounded Form U5 defamation claims – and likely awards for money damages – in FINRA arbitration. Although firms take their disclosure obligations seriously, allowing these claims to prevail and proliferate creates the perverse incentive for firms to act with a level of restraint when making Form U5 disclosures. This arguably does not best serve investor protection interests. As a policy matter, FINRA must discourage these outcomes and implement changes that promote fair and consistent resolutions of defamation claims in the FINRA arbitration forum.

B. *FINRA Should Improve the Fairness of Adjudicating Form U5 Defamation Claims*

In light of the above, we urge FINRA to update its rules and guidance to improve the fairness of adjudicating Form U5 defamation claims. To do so, FINRA should establish baseline standards for the adjudication of defamation claims, and then appropriately train its arbitrators on how to apply those standards.

First, before making an award of money damages for Form U5 defamation claims, FINRA arbitrators should be required to make an explicit finding that the statement at issue meets the substantive elements of a defamation claim. While defamation laws vary by state, prevailing on a Form U5 defamation claim should, at a minimum, require a finding that: (1) the alleged defamatory statement is a false statement of fact; and (2) the statement was made with malice in fact, meaning that the defendant either knew the statement was false or acted with reckless disregard for its truth.

Second, FINRA should provide guidance, training, and instructions to arbitrators on the substantive elements of defamation claims set forth above. While the Notice seeks comment on FINRA maintaining neutrality while implementing training on this topic, we do not view this as cause for concern. Providing arbitrators with instruction on the specific elements required to establish a legal claim should be an inherently neutral exercise.

Third, FINRA should provide member firms with qualified immunity for Form U5 statements required by industry rules. Absent FINRA's Form U5 disclosure requirements, firms would not face exposure to these unfounded defamation claims, and qualified immunity would ensure the continued integrity of Form U5 filings. Thus, FINRA should adopt the standard used by most states, which provides qualified immunity for Form U5 statements made in good faith

and without malice in fact.[19] This is particularly important given that FINRA arbitrators do not necessarily adhere to state law qualified immunity protections, and they do not usually even assess the applicability of such protections until later in the case.

Relatedly, FINRA should coordinate with other regulators regarding amendments to the Form U5 to mitigate the unnecessary legal exposure that firms face as a result of the Form's required narrative fields. To the extent possible, the required narrative fields should be replaced with regulator-generated, drop-down menus of check-the-box disclosures. If a firm checks the appropriate boxes, FINRA could then instruct arbitrators that the firm is entitled to safe harbor protection from a U5 defamation claim related to such disclosures.

IV. Eligibility and Motions to Dismiss

A. *Eligibility Rule (Rules 12206 & 13206)*

FINRA Rules 12206 and 13206 do not clearly define when the eligibility rule's countdown clock begins to run. The eligibility rule states only that a claim is not eligible for submission to FINRA arbitration where "six years have elapsed from the *occurrence or event* giving rise to the claim."[20] On its face, this language appears to impose a straightforward limitation of time for eligibility purposes. In practice, the application of the eligibility rule has created longstanding confusion.[21]

SIFMA believes that FINRA should amend its eligibility rule to expressly provide that it is a statute of repose. As such, it would bar claims that arose from transactions or wrongful events if they occurred more than six years prior to a claim being filed in FINRA's arbitration forum, regardless of when the injury was discovered.

Adopting a clear, bright-line rule provides the most efficient and transparent method for addressing stale claims in this forum, and it will ultimately drive more consistent outcomes. To have arbitrators decide eligibility issues using less definitive standards, like applicable statutes of limitation or the date of discovery of the harm, would only increase uncertainty around the eligibility rule's application and subject parties to costly and protracted discovery in the process.

The benefit of a strict eligibility requirement is evident when considering FINRA's specific question on this topic in the Notice. Specifically, the Notice asks how the statute of repose approach would "affect claims related to a continuing occurrence (*e.g.*, allegations of ongoing fraud starting with the purchase of a stock 10 years ago but continuing to a date within

[19] At least fifteen states (HI, ID, IN, IO, KS, ME, MI, MN, MS, MO, NM, OK, SC, SD, VT) have adopted the Uniform Securities Act (2002 version) providing qualified immunity for Form U5 statements required by industry rules. New York provides absolute privilege for Form U5 statements. *See Rosenberg v. Metlife*, 8 N.Y.3d 359, 361 – 68 (2007).

[20] Rules 12206 and 13206 (emphasis added).

[21] *See, e.g.*, FINRA 2015 DR Task Force Report, *supra* note 4, at 39 ("The Ruder Report noted that the eligibility rule had deleterious unintended consequences. Brokerage firms went to court, seeking to enjoin arbitrations based on the eligibility rule, which led to extended collateral litigation. This created confusion about the rule's application and contributed to the erosion of investor confidence in the SRO arbitration forum.").

six years of the date the arbitration claim was filed)."[22] Unlike under the current eligibility rule, there is no confusion regarding how a statute of repose would apply in this example: the rule requires a claim to be brought within six years of the stock's purchase, and the purchase actually occurred 10 years ago. Therefore, this claim would not be eligible for FINRA arbitration.

However, the dismissal of a FINRA arbitration claim on eligibility grounds does not mean the claim is gone. Instead, parties whose claims are dismissed pursuant to Rules 12206 or 13206 may still pursue their claims in court, where the applicable statute of limitations would govern. This outcome significantly mitigates any fairness concerns with treating the eligibility rule as a statute of repose – the dismissed party still has the opportunity to have their claim heard and defendants still face liability, albeit in a different forum.

Treating the eligibility rule as a statute of repose would be a welcome step towards addressing the confusion and inconsistent outcomes that persist under the current rules. SIFMA believes this change would greatly improve the quality and efficiency of the FINRA arbitration forum, particularly if FINRA allowed arbitration panels to consider eligibility motions earlier in a case, as addressed in more detail below.

B. *Motions to Dismiss (Rules 12504 & 13504)*

FINRA's rules severely limit a party's ability to file a motion to dismiss at the outset of a case. As a result, claims that are ineligible for FINRA arbitration and should be dismissed as a threshold matter instead survive longer into the arbitration process. This hinders the forum's efficiency and cost-effectiveness in resolving disputes.

FINRA's rules specifically state that motions to dismiss a claim prior to the conclusion of a party's case-in-chief at a hearing are "discouraged." Panels are precluded from acting on such motions unless they meet one of the three narrow grounds for dismissal set forth in FINRA's Rules 12504(a) and 13504(a),[23] and only after a prehearing conference on the motion is held or waived by the parties. Motions to dismiss based on eligibility grounds under Rules 12206 and 13206 impose the same prehearing conference requirements. FINRA's rules then impose additional burdens on the limited ability to obtain a prehearing dismissal, chief among them being that a party cannot move to dismiss without first filing an answer.

FINRA's approach hinders a party's ability to efficiently resolve cases that clearly do not belong in FINRA arbitration. FINRA itself recognizes that there are certain circumstances that warrant prehearing dismissal, and it carves them out in its rules. Yet even in those cases, FINRA requires parties to first file an answer before they can move to dismiss. Imposing

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[22] FINRA Regulatory Notice 26-06, *supra* note 2, at 14, Question B(i).3.

[23] Rules 12504(a)(6) and 13504(a)(6) set forth the three specific, limited circumstances in which a panel can act upon a prehearing motion to dismiss: (i) the moving party previously released the claims in dispute by a signed settlement agreement or written release; (ii) the moving party was not associated with the relevant account, security, or conduct; or (iii) the non-moving party previously brought a claim regarding the same dispute against the same party and that claim was fully and finally adjudicated on the merits and memorialized in an order, judgment, award or decision.

additional procedural burdens on prehearing motions does not further FINRA's investor protection goals; it only unnecessarily delays resolution and imposes burdens on the parties.

To address these concerns, SIFMA has proposed limited procedural changes to FINRA's motion to dismiss rules. As we recommended in our July 2025 letter, FINRA should amend Rules 12504(a)(2), 13504(a)(2), 12206(b)(1), and 13206(b)(1) to allow parties to file a motion to dismiss *prior* to filing an answer when the motion is based on the three specific circumstances set forth in Rules 12504(a)(6) and 13504(a)(6) or based on the eligibility rule under Rules 12206 and 13206.[24] In these cases, SIFMA also recommends that FINRA toll the answer deadline until the motion to dismiss deadline has been resolved and prioritize expeditious prehearing conferences on such motions.

We believe these changes, while limited, would go a long way towards ensuring that critical issues are handled much earlier in a dispute and that claims outside of FINRA's jurisdiction do not unnecessarily utilize resources. The changes are also consistent with FINRA's stated goal of preserving a party's right to have their claims heard, as they seek to reduce procedural burdens on the parties without expanding any of the existing grounds for motions to dismiss. Finally, we believe that these straightforward changes, which affect only the order of a party's filings, would be fairly simple for FINRA to implement.

While SIFMA would also support amending Rules 12504 and 13504 to permit an arbitration panel to act upon prehearing motions to dismiss on additional limited grounds, we have focused on our above proposal for purposes of this submission. These additional grounds would include motions to dismiss based on standing, capacity to sue, products or services unrelated to the business activities of a broker-dealer, and statutes of limitation.

V. Arbitrator Qualifications, Classifications & Selection, and Training

A. *Arbitrator Qualifications*

As we emphasized in our July 2025 letter, FINRA arbitrators are tasked with enormous responsibility, effectively serving as both judge and jury in the FINRA arbitration forum. Thus, their qualifications should be commensurate with that responsibility.

We commend FINRA's rule changes that raised the required employment and educational qualifications for incoming arbitrators, which will help improve the quality and fairness of the FINRA arbitration forum over time. We urge FINRA to consider additional steps to increase the number of arbitrators with process and subject matter expertise, given the complex and specialized nature of the disputes that arise in this forum.

SIFMA also recommends increasing arbitrator compensation to attract more qualified individuals to serve as FINRA arbitrators. These compensation changes could be limited to specific circumstances, for example, payments for hearing preparation time, higher

[24] The current text of each rule states: "Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed."

compensation based on experience level, and higher compensation for arbitrator panels assigned to high-value claims.

B. ***Arbitrator Classification and Selection***

FINRA's current definition of "public arbitrator" under Rules 12100(aa) and 13100(x) is far too restrictive and should be amended.

As currently drafted, FINRA's definition of public arbitrator excludes a wide range of professionals, including many that have only attenuated connections to the industry. This has the effect of eliminating many qualified individuals with subject matter expertise from the pool of public arbitrators, based on standards that go far beyond what should reasonably address perceptions of bias. In light of this, we would recommend, at a minimum, amending subparts (2) and (3) of these rules to allow attorneys, accountants, expert witnesses, and other professionals who no longer have ties to the financial industry to qualify as "public." These are not industry professionals, and previously providing professional services to the financial industry should not permanently exclude them from the public arbitrator pool.

The need to amend this definition is bolstered by the inherent unfairness of how it operates in practice. As this Rule now applies, an attorney who currently represents parties *against* broker-dealers or any entities in the financial industry, including in matters in FINRA arbitration, can still be designated as a "public" arbitrator, while anyone with even limited industry ties is designated as "non-public" and can be struck entirely. If the purpose of the Rule is to address perceptions of bias, it is only fair that attorneys who represent parties in matters against the financial industry are subject to the same disqualification standards as those who represent parties within the financial industry. We urge FINRA to consider rule amendments to level the playing field in this regard.

FINRA should also amend its rules regarding the composition of arbitration panels for both customer and industry disputes under Rules 12403 and 13402.

First, under Rule 12403(c)(1)(A), either party is permitted to strike all arbitrators from the non-public arbitrator list for any reason. SIFMA recommends that FINRA amend this rule so that parties may not strike more than two arbitrators from the non-public arbitrator list without agreement from all parties.

Historically, FINRA arbitration panels in customer disputes included at least one non-public (or "industry") arbitrator. This was a commonsense approach; it ensured there would be at least one member of the panel who understood the securities industry and rules underlying the claims brought in this forum. But FINRA has since changed its rules to allow parties to strike all industry arbitrators and select an all-public panel, the result of which has been that many panels now routinely lack an arbitrator who understands the business they are judging. In our view, this does not help investors obtain better outcomes. We believe that investors would be well served by the presence of an industry arbitrator who understands how securities firms operate and can better identify misconduct, as opposed to an all-public panel without that expertise. Moreover,

FINRA has not presented evidence of pro-industry bias where three-arbitrator panels include one industry arbitrator.[25]

Second, under Rule 13402, if an industry dispute has a three-arbitrator panel and is between members, all will be non-public arbitrators. But if an industry dispute has a three-arbitrator panel and involves an associated person, two will be public arbitrators and one will be a non-public arbitrator. SIFMA recommends that FINRA amend Rule 13402 to require that any industry disputes with three arbitrator-panels require all non-public arbitrators, regardless of whether the claim involves an associated person or not. Associated persons are industry members, and there is no reason that the arbitrator panel requirements should change because an associated person is a party to a dispute.

C. *Arbitrator Training*

SIFMA's July 2025 letter recommended revising the FINRA arbitrator training program to help ensure arbitrators can adequately perform their responsibilities.

SIFMA recommends that FINRA implement additional required training on topics related to: (i) the arbitration process, including FINRA's Discovery Guide and other discovery issues, arbitrator withdrawals and recusals, and hearing oversight and efficiency issues (as discussed in more detail below); (ii) the securities industry; (iii) substantive elements of law that are critical to many arbitrations, for example, causation and attorney-client privilege; and (iv) the overarching obligation to maintain a neutral adjudicatory position and avoid assuming, or creating the appearance of assuming, an advocacy position in favor of one party or the other.

Training should incorporate a testing mechanism to ensure that arbitrators understand the subject matter. We also recommend continuing education requirements for all FINRA arbitrators to remain up-to-date on key topics, which should be continuously updated to address trends and issues in FINRA arbitration. Likewise, there should be mandatory additional training for arbitrators with poor evaluation records and for arbitrators who have not served on a panel within a certain time period.

D. *Assessment of Poorly Performing Arbitrators*

We recommend that FINRA implement a more transparent process for identifying and removing FINRA arbitrators who are not adhering to applicable rules or adequately performing their duties.

Despite FINRA's efforts to enhance the quality of individuals serving as arbitrators, SIFMA members have repeatedly expressed concerns that certain arbitrators continue to fall short in executing their required responsibilities. We have observed a spectrum of issues, from arbitrators who fail to maintain attention or even stay awake during the proceedings, to

[25] In 2025, 109 cases were decided by all-public panels, and 31 cases were decided by majority-public panels (2 public arbitrators and 1 non-public arbitrator). In those cases, customer damages were awarded in 35% of cases (38 cases) and 29% of cases (9 cases), respectively. *See* FINRA Dispute Resolution Services Statistics, *Results of All-Public Panels and Majority Public Panels in Customer Cases*, https://www.finra.org/arbitration-mediation/dispute-resolution-services-statistics.

arbitrators who fail to enforce standards of professional decorum or disclose clear conflicts of interest. While participants submit evaluation forms that rate arbitrator performance when their case concludes, and also provide feedback to FINRA during the pendency of the case, it is unclear if FINRA ever takes any steps to address the concerns. We recommend that FINRA Dispute Resolution staff increase their attendance at hearings and prehearing conferences to more effectively identify and address arbitration issues in real time. This is particularly important because, after the first hearing session begins, parties are extremely limited in their ability to address arbitrator issues and/or remove an arbitrator under the FINRA rules.[26]

In addition, we continue to have significant concerns regarding arbitrator withdrawals, which often occur late in the arbitration process and without explanation to parties. These withdrawals result in significant delays, prejudice to the parties' ability to present a complete case, and a decline in panel quality (as parties are often left with the option of taking a lower-ranked arbitrator from the original lists or trying to find a qualified and available arbitrator from the short list). To address this issue, we recommend that arbitrators are subject to removal from the arbitrator roster if they: (i) withdraw from a case within an unreasonably close period of time to a final hearing date without good cause, or (ii) withdraw from more than three cases annually following appointment to a panel after the scheduling order has been issued. We also believe arbitrator withdrawals should be included on the arbitrator disclosure forms provided to parties.

VI. Discovery and Hearing Oversight/Efficiency

A. *Discovery*

The landscape of e-discovery is constantly evolving, with the widespread availability of electronically stored information (ESI) playing a critical role. Yet FINRA's arbitration rules, guidance, and training have not kept pace. The end result is that FINRA arbitration panels are ill-equipped to resolve e-discovery issues on their own in a fair, efficient, and cost-effective manner. This not a critique of the FINRA arbitrator pool; modern e-discovery poses complex challenges that require the appropriate resources to resolve.

Accordingly, we strongly recommend that FINRA consider establishing a process through which arbitrators can escalate discovery issues and receive assistance in resolving them. FINRA should also consider making such processes mandatory for claims over a certain amount. As we recommended in our July 2025 letter, examples include allowing the appointment of a special discovery master to resolve discovery disputes or appointing specialized persons to advise on privilege issues.[27] Specialized training could also be provided to arbitrators on ESI discovery and protocol.

Likewise, SIFMA recommends that FINRA impose stricter guidelines around the discovery process itself to ensure cases proceed in an efficient and cost-effective manner. We

[26] After the first hearing session begins, the Director may only remove an arbitrator based on the failure to disclose required information that was previously unknown to the parties, unless all parties agree to a removal. *See* Rules 12407 and 13410. Parties can request arbitrator recusal for "good cause," but such requests are decided by "the arbitrator who is the subject of the request." *See* Rules 12406 and 13409.

[27] *See* SIFMA July 2025 Letter, *supra* note 3, at 7.

made several suggestions for doing so in our July 2025 letter, including, but not limited to: (i) mandatory discovery calls and deadlines; (ii) limits on the number and scope of document requests; and (iii) higher standards for documents requested outside of those listed in the Discovery Guide. [28]

Finally, FINRA should ensure that arbitrators receive training on discovery abuse and the tools available to them for addressing it, including sanctions and disciplinary referrals. This is critical to avoid non-compliance with discovery obligations, which can threaten case outcomes and ultimately undermine confidence in the FINRA arbitration forum.

B. ***Hearing Oversight/Efficiency***

Similar to our above recommendations related to discovery, many FINRA arbitrators lack the expertise to adequately resolve issues that arise during arbitration proceedings. FINRA should ensure that arbitration hearings are conducted in an efficient and orderly manner.

We recommend that FINRA consider establishing a central contact point who is available to assist arbitrators who encounter procedural or evidentiary questions during proceedings. While this would be an optional resource, we think it would significantly improve the efficiency of the proceedings. In our July 2025 letter, we also recommended that FINRA establish more stringent parameters for arbitrator oversight of hearings, including, but not limited to: (i) mandatory case schedules and deadlines; (ii) managing the time allotted for each party to present their case; and (iii) limitations on numbers of witnesses and testimony length. [29] Finally, we recommend that FINRA provide guidance to arbitrators on enforcing the decorum of parties, representatives, and witnesses throughout the hearing process.

Another issue that has become relevant to hearing oversight is the increasing use of AI tools by parties to generate pleadings and other documents in FINRA arbitration. FINRA arbitrators must have the tools to hold parties accountable for ensuring the accuracy of the information in their submissions when using AI, and we recommend that FINRA create a rule to address this. Such a rule could require parties to disclose that they have used AI in the preparation of their submissions, require that they independently verify the accuracy of AI-generated content in their submissions, and provide for sanctions for violations of the rule. Comparable disclosure rules with respect to AI-generated material exist in courts across many jurisdictions.[30]

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[28] *Id.*

[29] *Id.* at 8.

[30] Numerous judges across federal and state courts have implemented individual disclosure and/or verification requirements for AI use. *See* Ropes & Gray, *Standing Orders, Local Rules, and Decisions on the Use of AI: State and Federal District Courts* (updated as of Apr. 16, 2026), https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker.

VII. Explained Decisions in Awards

FINRA should not require explained decisions in arbitration awards. Requiring explained decisions would undoubtedly create a less efficient FINRA arbitration process, delaying resolutions of matters without offering commensurate benefits to the parties.

First, explained decisions would impose additional burdens and costs on the arbitration system. As an initial matter, we expect that their implementation would present a significant challenge. This view was shared by the Dispute Resolution Task Force formed by FINRA in 2014, who stated that explained decisions could "strain an arbitration system that uses individuals who serve as arbitrators on an occasional basis and *who lack formal training or experience in writing decisions*."[31] Thus, the Task Force determined it would be critical that FINRA develop and administer a program to train arbitrators in how to write appropriate decisions and ensure they are capable of doing so.[32]

Even if FINRA could overcome these hurdles, explained decisions would also undermine the efficiency and cost-effectiveness of the FINRA arbitration forum. Such decisions would undoubtedly slow down the process, as arbitrators would need additional time to draft the decisions. FINRA would have to spend money and resources to develop a sufficient training program for arbitrators to write these decisions, and arbitrators would likely need to be compensated for the additional workload. Thus, implementing this change would entail significant costs that would be passed on to users of the forum.[33]

Second, requiring explained decisions would transform FINRA arbitration into a more litigation-like process, further undermining the purpose of the forum. Arbitration awards are not intended to have precedential value, but having explained decisions in all cases would create incomplete records that parties could attempt to rely on in subsequent cases. Unlike judicial decisions, the underlying facts and reasoning in the explained decisions could be incomplete or missing, creating the potential for their misuse, even if unintentional. It seems inadvisable to put arbitrators – most of whom are non-lawyers with no experience in the securities industry – into the role of creating law.

Third, explained decisions are likely to result in more appeals of arbitration awards. This will further drive up the cost of the process and the time needed to resolve disputes as parties engage in prolonged post-arbitration litigation. There is also an increased risk that awards will be vacated on appeal if arbitrators are not well-equipped to write explained decisions, even if they reach the right outcome.[34] This will ultimately undermine both the fairness of the process and the perception of the forum as an efficient dispute resolution venue.

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[31] *See* FINRA 2015 DR Task Force Report, *supra* note 4, at 23 (emphasis added).

[32] *Id.*

[33] *Id.* at 6 ("It is obvious, however, that implementation of many of these reforms, including those relating to arbitrators and explained decisions, will entail significant costs that will be passed on to the users of the forum.").

[34] *Id.* at 23.

Finally, there appears to be no data from FINRA or elsewhere that demonstrates party interest in explained decisions or support for changing the rules to require them. According to FINRA's statistics, FINRA has received only a handful of joint requests for explained decisions, even after waiving the $400 fee in 2017, [35] and the Notice references only a single commenter's request for explained decisions.[36] Thus, there is not sufficient justification to implement burdensome requirements on the FINRA arbitration process.

VIII. Unpaid Awards

As a general matter, SIFMA supports efforts to reduce the number of unpaid arbitration awards. However, SIFMA strongly opposes the creation of an industry-financed customer recovery pool to achieve this goal, which would introduce moral hazards and be unfair to the broker-dealers who honor their arbitration award obligations.

If FINRA created and maintained a pool of money to pay unpaid arbitration awards, it would pose enormous potential for abuse. Claimants' lawyers would likely pursue arbitration claims seeking large damages awards, particularly against smaller or under-capitalized firms, knowing the likely result would be a default judgment for the entire claimed amount. This would then be paid out of the proposed recovery pool. One would reasonably expect to see the number of arbitration claims, the claim amounts, and the default rate continue to grow, putting strain on the system and rewarding these unfair tactics. This system also would likely spur the growth of an industry of claimants' lawyers who would pursue the collection of prior unpaid awards solely for purposes of cashing-in on the recovery pool in return for a contingency fee. As a result, a recovery pool of this kind would primarily serve these lawyers and their fees, not investors.

In addition, an industry-financed customer recovery pool represents an unfair solution that serves only to punish firms who do the right thing. An industry-financed pool inappropriately places the burden of unpaid arbitration awards on the backs of those firms who do pay their awards, and ultimately, their customers.[37]

SIFMA supports targeted efforts by FINRA to ensure firms pay their arbitration awards in full. But, as we have stated in prior submissions, the issue of unpaid awards needs to be addressed on the front end – before an arbitration arises – by ensuring that the firm maintains adequate resources to satisfy it. Specifically, SIFMA has previously supported an approach by FINRA that seeks to identify the small number of firms with an extensive history of misconduct and/or relevant disclosure events, and as appropriate, requires those firms to set aside cash

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[35] FINRA Regulatory Notice 26-06, *supra* note 2, at 31 (citing an average 4 joint requests per year for explained decisions from January 2017 through December 2025).

[36] FINRA Regulatory Notice 26-06 cites to a single request for mandatory explained decisions in all FINRA arbitration cases. *See id.* at 31 & n.234.

[37] SIFMA Testimony before U.S. Senate Committee on Banking, Housing and Urban Affairs (June 28, 2018) (objecting to a bill that would have required FINRA to establish an industry-financed recovery pool to pay the full value of unpaid arbitration awards), https://www.sifma.org/wp-content/uploads/2018/06/Legislative-Proposals-to-Examine-Corporate-Governance.pdf.

deposits or qualified securities that could be applied to pay the firm's or its representatives' unpaid awards. Likewise, SIFMA supported FINRA providing firms with an electronic template or worksheet they could use to calculate whether they should be subject to such additional obligations.[38] FINRA has the ability to address the issue of unpaid arbitration awards through these or similar approaches, without the need for more drastic measures.

IX. Arbitration Awards Online

SIFMA believes that the Arbitration Awards Online (AAO) database should continue to include publicly available copies of all FINRA arbitration awards. We do not see a reason for FINRA to amend its rules to allow FINRA to remove awards from AAO or redact information from awards published on AAO.

The information in AAO provides transparency into the FINRA arbitration process and serves as a valuable resource to firms and investors alike. For example, in connection with the arbitrator selection process, parties can use AAO to review the arbitration awards in which a potential arbitrator has participated. Permitting the removal or redaction of award information from AAO – regardless of the reasons for doing so – would ultimately make the database less useful and the FINRA arbitration process less transparent, to the detriment of all participants in the forum.

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X. Conclusion

SIFMA appreciates the opportunity to provide comments and feedback on the FINRA arbitration forum for your consideration. SIFMA believes that these recommendations would improve the quality, efficiency, and fairness of the forum for both investors and firms. We welcome the opportunity to discuss our recommendations in more detail and look forward to a continued dialogue with you on these issues. If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

A. Pompei

Alyssa Pompei
Vice President & Assistant General Counsel

[38] SIFMA Letter, *Regulatory Notice 19-17 (Protecting Investors from Misconduct)* (July 1, 2019), https://www.sifma.org/wp-content/uploads/2019/07/sifma-comment-re-RN-19-17-FINAL-7.1.2019.pdf.