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Via Email to pubcom@finra.org
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006-1505

Re: FINRA Regulatory Notice 26-06, Arbitration

Dear Ms. Mitchell,

Thank you for the opportunity to provide feedback in response to FINRA's request for comment on modernizing its rules, guidance, and processes regarding its arbitration forum. We write this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law. The Clinic is part of the St. Vincent de Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents underserved investors with small dollar claims and is committed to investor protection and education. The Clinic regularly represents investors, often retirees and those with little investment experience, in FINRA arbitration, and we write to underscore the importance of fair rules, guidance, and processes that protect investors in the forum. We offer the following comments in response to FINRA Regulatory Notice 26-06.

Forum Selection

In response to Questions A(i).5, A(ii).1, and A(ii).2, the Clinic believes that the existing rules regarding forum selection should be preserved. Parties already retain flexibility to mutually agree – post dispute – to resolve disputes outside the FINRA forum. Preserving every customer's right to arbitrate in FINRA's forum serves FINRA's investor protection mission.

In response to Questions A(i).1, A(i).2, and A(i).3, the Clinic objects to any framework that would categorically permit the exclusion of claims from FINRA arbitration based on complexity, dollar value, or investor type. Such distinctions are artificial and difficult to administer in practice. For example, claims of substantial monetary value do not necessarily equate to the presence of a sophisticated claimant, and cases can be small in value and highly complex. FINRA should refrain from changing the rules in a way that opens the door for firms to encourage customers to waive access to FINRA's forum, as customers may not fully appreciate the procedural implications and additional costs of electing an alternative arbitration forum.

In relation to Questions A(i).4, A(ii).1, and A(ii).2, while the Clinic supports the objectives of the Investor Choice Act, which would eliminate mandatory predispute arbitration clauses and restore investor access to courts, this change would require congressional action. In the meantime, and even if the Act is adopted, the Clinic believes that retail investors should always be able to choose the FINRA arbitration forum to resolve their disputes with members and their associated persons.

Eligibility and Motions to Dismiss

(i) FINRA Should Maintain the Eligibility Rule for Customer Disputes

In response to Question B(i).1, FINRA should maintain its eligibility rule for customer disputes rather than replacing it with statutes of limitations. The rule has proven to be sufficiently administrable by arbitrators in the forum. Rule 12206(a) provides that "a claim is not eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim." By contrast, statutes of limitations are tied to specific causes of action. Because FINRA Rule 12302 requires simply "[a] statement of claim specifying the relevant facts and remedies requested," replacing the eligibility rule with statutes of limitations does not make sense in the context of the Customer Code.

In addition, in response to Question B(i).2, FINRA should make more explicit that the rule should be interpreted and applied broadly and flexibly, particularly where the occurrence or event involves ongoing conduct or activity, ongoing damages, or concealment of harm. FINRA guidance and case law already suggest this is generally accepted. FINRA's Arbitrator's Guide states that the arbitrators "may find that there is a continuing occurrence or event giving rise to the dispute."[1] In practice, FINRA and its predecessor NASD have determined that the occurrence or event date is not limited to the initial transaction date.[2] Courts have similarly interpreted Rule 12206(a) broadly, holding that "occurrence or event" may encompass not only the initial purchase but also active concealment, ongoing wrongful acts or omissions, and failures to supervise.[3] These principles should be expressly codified in the rule, while taking care not to impose additional pleading requirements or burdens on claimants.

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[1] FINRA Dispute Resolution Services, *Arbitrator's Guide* at 49 (March 2026 edition).

[2] *See* Christine Lazaro & Michael S. Edmiston, *Eligibility and Statutes of Limitations in Arbitration* (New York City Bar Program Materials for "Securities Arbitration & Mediation Hot Topics 2018," 2018) at 3-4, https://ssrn.com/abstract=3183369.

[3] *Id.* at 4-8. The article addresses a series of federal court decisions interpreting the phrase "occurrence or event" in FINRA Rule 12206(a) broadly.

Finally, in response to Question B(i).3, FINRA should not transform the eligibility rule into a statute of repose. Firms hold information unavailable to their customers, and a customer may not realize for an extended period of time that a problem has arisen in their account, including when wrongful conduct is masked by favorable broader market conditions or when the true value of an illiquid investment is hard to discern. A hard cutoff approach like a statute of repose can afford member firms unjust immunity from their wrongdoings and is contrary to FINRA's investor protection mission. Given the information, knowledge, and sophistication asymmetry between customers and firms, customers deserve more protection in such circumstances.

(ii) FINRA Should Not Expand or Relax the Rules Governing Prehearing Motions to Dismiss

In response to Question B(ii).1, we recommend that FINRA maintain its current rules governing prehearing motions to dismiss and not change the timing or expand the circumstances in which such motions may be filed. In Regulatory Notice 09-07, FINRA recognized that it had received complaints that parties routinely and repetitively filed prehearing motions to dismiss to delay hearings on the merits, increase customers' costs, and intimidate unsophisticated customers. These concerns remain true today. An expansion of motions to dismiss would disproportionately impact investors who are unfamiliar with FINRA's rules and lack the resources to retain counsel and is contrary to FINRA's goal of providing a fair and efficient arbitration forum. Moreover, it would deprive customers of their right to have their claims heard on the merits, thereby undermining public confidence in the fairness of FINRA arbitration.

Rules Concerning Arbitrators

The Clinic's comments on this topic in particular are focused on arbitrators in customer disputes.

(i) Arbitrator Qualifications

In response to Questions C.1 and C.2, a diverse arbitrator pool that consists of arbitrators from a broad range of backgrounds is essential to give customers meaningful choices when selecting arbitrators. We also recognize the value of having access to a pool of arbitrators with procedural expertise. FINRA should maintain a diverse pool while taking reasonable steps to ensure that the arbitrators are familiar with FINRA's procedural requirements and competent in managing the arbitration process.

(ii) Arbitrator Classification and Selection

In response to Question D.1, FINRA should amend Rule 12100(aa) to permit lawyers who represent investors to serve on the public arbitrator roster. Under FINRA's current rule, any professional who devotes a significant portion of their time to providing services to parties in disputes concerning investment transactions, regardless of whether they represent investors or

firms, is classified as a non-public, industry arbitrator. This classification treats investor advocates the same as industry representatives, which is inconsistent with the purpose of the public arbitrator category. Unlike attorneys who represent the industry, attorneys who represent investors in such disputes do not maintain an ongoing affiliation with the securities industry and should not be classified as non-public arbitrators.

In response to Question D.2, FINRA should maintain Rule 12403(c)(1), which permits parties to strike all non-public arbitrators from the selection list. This gives customers the option to have an all-public panel. In Regulatory Notice 11-05, FINRA stated that it believed giving customers this option would "enhance confidence in and increase the perception of fairness in the FINRA arbitration process." FINRA should continue its commitment to this goal.

In response to Questions D.3 and D.4, the Clinic does not oppose a rule amendment that would allow all claimants collectively and all respondents collectively to share the number of strikes during arbitrator selection. However, we do not support expanding the number of the arbitrators on each list. Increasing the number of the arbitrators on the lists would impose an uneven burden on investors, particularly small or pro se customers with limited time and resources and who are not repeat players in the forum, to research and investigate potential arbitrators during the selection process.

(iii) Arbitrator Training

In response to Questions E.1 and E.2, the current training for FINRA arbitrators emphasizes process management and procedural issues. FINRA should continue to enhance procedural training for arbitrators to help ensure that arbitrators understand and apply the rules governing the dispute resolution process so that the forum operates to a high standard. However, we do not recommend that training requirements be decided based on the complexity or dollar amount of the case, because, as noted above, there is no clear or administrable standard for making such distinctions. In addition, we believe that enhanced substantive training for the expungement process is proper because that is a separate proceeding with different considerations from those in customer disputes.

In response to Question E.1, FINRA should consider adding arbitrator training on implicit bias and anti-bias. In New York, jurors are shown a video titled, "Jury Service and Fairness." New York courts also require judges and court employees to complete anti-bias training. Incorporating such training can help ensure investors have access to a system that is fair and just.

In response to Question E.3, while we recognize the appeal of providing additional training to arbitrators on substantive issues of law and/or investment products, we are concerned that such training could raise neutrality concerns. FINRA is a forum of equity, and it is therefore more appropriate for the parties to educate the arbitrators about the substantive issues. However, as arbitrators are not permitted to conduct their own research, investors, particularly small and pro se investors, are at a disadvantage in educating arbitrators on these issues. Therefore, in addition to enhanced procedural arbitrator training, we urge FINRA to provide more resources for claimants, especially pro se customers, who often lack knowledge and familiarity with the

arbitration process and the underlying investment products. We also urge FINRA to work with fellow regulators to explore funding for investor advocacy clinics at law schools so that more small investors have access to legal representation in the forum. The declining number of such clinics represents an increasing threat to investor protection, particularly for underserved investors with smaller claims.[4]

Discovery

In response to Questions F.1 and F.5, the Clinic supports a comprehensive update to the Discovery Guide and associated production lists. The goal of modernizing FINRA discovery should aim to mitigate the inequitable effects of the existing information asymmetry between firms and investors, especially unsophisticated investors. Generally, investors lack awareness of the existence, types, and content of the documents they are entitled to receive and any updates should aim to make the Guide and the lists more easily understandable. The updated Discovery Guide should include easily understandable descriptions of the key records firms are required to maintain, such as order and trade tickets, trade blotters, exception and concentration reports, and relevant types of correspondence records and notes. Additionally, the Clinic supports requiring firms to produce an organization chart or list of personnel related to customers' accounts and transactions to inform them of the actual scope of presumptively discoverable documents.

In response to Question F.5, while arbitrators currently have the ability to issue sanctions under Rule 12511, FINRA should amend the rule with the goal of deterring boilerplate objections to presumptively discoverable documents. The obligation to produce presumptively discoverable documents is not discretionary; accordingly, objections from firms that fail to identify a specific, cognizable reason why production is not feasible should be explicitly considered as waived and sanctionable. This is especially true given the recordkeeping obligations of firms, their sophistication, and their position as repeat players in the forum. Moreover, providing examples or guidance regarding the meaning of "frivolously objecting" would help pro se customers discern frivolous objections when they appear.

In response to Question F.4, the Clinic believes firms should be required to disclose insurance coverage information since it is critical to a party's ability to gauge whether settlement is possible or collection is practical. Repeat players, who may have multiple ongoing claims against them, may be able to assert unjust leverage in settlement discussions due to this blind spot. Investors should have a fuller understanding of the financial viability and collectability of any finding of liability to assess whether it makes economic sense to proceed with a claim.

We also recommend that FINRA ban confidentiality agreement clauses that require customers to destroy firm documents marked as "confidential" at the end of a case, as counsel must retain complete client files in accordance with the rules of professional responsibility.

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[4] *See*, *e.g.*, *Recommendation of the SEC Investor Advisory Committee regarding Investor Advocacy Clinic Funding* (June 9, 2022), https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220609-investor-clinic-recommendation.pdf; *Recommendation of the Investor Advisory Committee, Financial Support for Law School Clinics that Support Investors* 4 (Mar. 8, 2018), https://www.sec.gov/spotlight/investor-advisory-committee-2012/law-clinics-recommendation.pdf.

In response to Questions F.1 and F.3,we suggest that FINRA update the Discovery Guide and supporting guidance to take advantage of modern and dynamic technological capabilities to improve navigation, engagement, structure, and understanding for users.

Hearing Oversight and Efficiency

The Clinic commends FINRA and its case management teams for their efforts in improving the efficiency and orderly administration of arbitration proceedings and supports FINRA's continued efforts in this area.

Punitive Damages

In response to Question H.1, FINRA should maintain its current framework permitting arbitrators to award punitive damages when appropriate. As Regulatory Notice 26-06 acknowledges, only three percent of the 47,835 awards issued over nearly 38 years included punitive damages. There is no evidence of a pervasive problem that suggests a need for restricting or eliminating punitive damages, and doing so would diminish the critical function of deterring egregious misconduct.

Moreover, in response to Question H.2, FINRA should not permit parties to use predispute agreements to preclude or limit punitive damages. Such agreements are contracts of adhesion. Customers have no bargaining power when entering into brokerage agreements because they are left with no choice but to accept the terms as presented, often without understanding what rights they are waiving. In addition, permitting predispute agreements to limit punitive damages could be vulnerable to legal challenge in light of the Supreme Court's precedent in Mastrobuono.[5]

In response to Question H.5, we do not believe it necessary that arbitrators have additional experience or qualifications to be able to award punitive damages. Arbitrators already receive training that includes "[u]nderstand[ing] considerations for making fair and just arbitration awards." Separate training on punitive damages should not be necessary.

Explained Decisions in Awards

In response to Question I.1, the Clinic supports transparency in the arbitration process and the current rules on explained decisions, which permit arbitrators to decide on their own to write an explained decision and require arbitrators to provide an explained decision at the parties' joint request. We do not support requiring explained decisions in all cases. However, because investors are not given a choice of forum and would receive an explained decision in court, we believe customers should be permitted to unilaterally request an explained decision in arbitration. This policy would align with FINRA's investor protection mission and customers' perception of fairness in the forum by providing clarity and closure.

[5] *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 61 (1995). The Supreme Court enforced an NASD arbitration award of punitive damages involving a brokerage firm's client agreement by construing the ambiguity of the agreement against the drafter, the brokerage firm.

Arbitration Awards Online

In response to Question J.3, the Clinic supports improvements to the functionality and comprehensiveness of the Arbitration Awards Online ("AAO") database. Closing the information asymmetry gap is an objective in line with the fundamental mission of developing a fair forum and should be treated as a priority. We urge FINRA to take inspiration from the functionality of the current LexisNexis or Westlaw platforms for arbitration awards to improve navigation and insight.

In response to Questions J.1 and J.2, regarding the data accessible on AAO, FINRA should not redact or remove awards from the database, including where a broker has been granted expungement from the BrokerCheck system. The factual record contained in an arbitration award serves important functions for regulatory oversight, investor due diligence, and academic research. Removing or redacting awards in connection with expungement creates a regulatory blind spot and compromises the integrity of the historical record that FINRA and researchers depend on.

Unpaid Awards

In response to Questions K.1, K.2, and K.3, FINRA should adopt additional measures, including establishing a recovery fund, to effectively address the problem of unpaid awards. From 2020 to 2024, unpaid customer awards totaled $80 million; in 2024 alone, unpaid customer arbitration awards amounted to $22 million, representing 37% of the total amount awarded that year.[6] This problem has persisted for years and should be promptly addressed.

Currently, FINRA addresses unpaid awards through suspending brokerage firms and individuals from its membership (Rule 9554), identifying firms with significantly high-risk disclosures as "restricted firms" (Rule 4111), and maintaining a public list of firms and individuals responsible for unpaid customers arbitration awards. However, these measures have been insufficient, as FINRA's own reported statistics demonstrate. In Regulatory Notice 20-11, FINRA recognized that most unpaid awards are rendered against inactive firms or individuals whose FINRA registration had already been terminated, cancelled, or revoked. Furthermore, suspension from FINRA membership does not prevent the firms or individuals from continuing to operate in other capacities, such as registering as an investment adviser. Although we support every effort FINRA has undertaken to address unpaid awards, we believe a more effective solution is required to ensure the actual payment of these awards to customers.

We urge FINRA to set up a recovery fund to pay outstanding unpaid awards. As PIABA proposed in its report on unpaid awards, FINRA can fund the pool through fines levied against member firms, net profits, and an assessment against all FINRA members.[7] We recommend that

[6] Statistics on Unpaid Customer Awards in FINRA Arbitration, https://www.finra.org/arbitration-mediation/dispute-resolution-statistics/statistics-unpaid-customer-awards-finra-arbitration (last visited June 18, 2026).
[7] Andrew Stoltmann & Hugh D. Berkson, PIABA: *Unpaid Arbitration Awards: The Case for An Investor Recovery Pool* (2018), at 9, https://piaba.org/wp-content/uploads/2024/07/REPORT-Unpaid-Arbitration-Awards-March-7-2018.pdf.

the fund start with paying compensatory damages to make the harmed investors whole. FINRA has adequate sources of funding for the pool. In March 2026, FINRA refunded $100 million in surplus revenue to member firms based on strong results from trading activity and industry revenue in 2025.[8] FINRA could have paid the unpaid awards from 2020 to 2024 ($80 million) with the surplus it returned to member firms. At the same time, the Clinic also cautions that, should FINRA fund the pool through member assessments, it should ensure those costs are not passed through to customers in the form of higher fees or charges.

Additionally, FINRA should require firms or individuals with high risk to have more capital or specific funds to pay awards, and revisit and expand the definition of "restricted firm." We recognize that Rule 4111 already requires "restricted firms" to set aside deposits for certain purposes, including paying unpaid awards, and sets out criteria for such designation. However, the funds set aside may not be sufficient for the unpaid amounts. More importantly, the rule's scope might be too narrow to capture the most problematic firms. Firms can avoid restricted firm designation by terminating brokers at their firm who have problematic BrokerCheck records within 30 days of receiving FINRA notification under Rule 4111(c)(2). Therefore, we urge FINRA to revisit the standard for "restricted firm" and adopt more stringent standards to prevent firms from evading the list.

Thank you for the opportunity to comment on these important issues.

Respectfully Submitted,

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[8] *Brokers to get US$100-million rebate: FINRA* (Mar. 19, 2026), Investment Executive, https://www.investmentexecutive.com/news/brokers-to-get-us100-million-rebate-finra/ (last visited June 18, 2026).