Wealth Space Asset Management

April 30, 2026

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

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

Dear Ms. Mitchell:

The opportunity to bring a FINRA member view of the current state of the FINRA arbitration system and FINRA's willingness to listen to member firm is appreciated.

FINRA's arbitration system is not meeting its core obligations of fairness, consistency, and transparency. While Regulatory Notice 26-06 acknowledges the need for modernization, incremental adjustments will not correct the systemic deficiencies that now define the forum. The current framework produces unpredictable outcomes, lacks accountability, and imposes distorted incentives that disadvantage member firms while encouraging low-merit claims. Absent meaningful reform, confidence in FINRA arbitration will continue to erode.

I. Arbitrator Competence and Structural Bias

A. Persistent Lack of Relevant Expertise

FINRA continues to rely on arbitrators who lack current, working knowledge of the modern financial services industry. This is not an isolated issue—it is structural. Panels routinely adjudicate complex matters involving products, supervision, and regulatory obligations they do not adequately understand. The result is predictable: awards untethered from industry reality and unsupported by rigorous analysis. Plaintiff attorneys state that training must remain procedural rather than substantive—that FINRA should not train arbitrators on the substantive law of securities claims, the elements of state-law causes of action, or the merits of investment products. The strategic logic is transparent: an arbitrator panel without working knowledge of securities regulation is far easier to mislead with selective narratives. That is not a feature of a fair adjudicatory system. It is an exploit.

B. "Lottery" Outcomes Are Now the Norm

Outcome variability is no longer incidental—it is a defining feature of the system. Identical fact patterns produce materially different results depending on panel composition. This is incompatible with any credible adjudicatory framework. The absence of appellate review ensures that erroneous or irrational awards stand uncorrected. We support a requirement of a four year college degree or five years of professional experience for arbitrators.

C. Panel Composition Has Become a Source of Bias

The shift toward all-public panels has materially degraded decision quality. Panels lacking industry expertise default to subjective "fairness" narratives rather than applying FINRA rules and governing law. This is not neutrality—it is a structural bias against respondents who are evaluated without relevant context. Claimants' counsel have publicly characterized "…Rule 12403(c)(1)(A) — which lets parties strike all non-public arbitrators…" as a landmark investor protection win—while simultaneously opposing any substantive training in securities regulation, product characteristics, or regulatory framework, insisting instead on "procedural and ethics training" only. The contradiction is not incidental. An arbitrator who cannot evaluate regulatory compliance cannot hold a firm accountable for it—and cannot be misled about it either. The current panel composition rules serve one side of the docket.

D. Required Action

FINRA must:

- Require at least one qualified industry arbitrator on every panel without exception.
- Restore a mandatory mixed-panel structure in all customer cases.
- Impose enforceable qualification and continuing education standards tied to current industry practices.
- Rewrite arbitrator guidance to eliminate any suggestion that "equity" may override governing law.
- Establish a formal removal mechanism for underperforming arbitrators.
- Implement a limited but real appellate process for material awards and procedural failures.

II. Opaque Decision-Making and Uncontrolled Cost Exposure

A. Lack of Explanation Undermines Legitimacy

FINRA permits arbitrators to issue awards with no meaningful explanation. This is indefensible. Parties are left without any understanding of what rules were applied, what facts were credited, or how damages were calculated. No modern dispute resolution system operates this way.

B. Awards and Fees Are Frequently Disconnected from the Record

Damage awards and attorney fee allocations often bear little relationship to the underlying claims. Billing practices—such as charging for unused hearing time—further compound cost inefficiencies. The deeper problem is that the forum is increasingly being used as a vehicle to recover investment losses that have nothing to do with regulatory violations. Every investor who accepts a brokerage account accepts, with it, the fundamental reality of market risk. Brokerage firms are not insurers of investment outcomes. Treating them as such—through awards untethered from any finding of actual misconduct—distorts the system and imposes costs that ultimately harm the investing public the forum purports to protect.

C. Fee Structure Incentivizes Frivolous Filings

The current 10-to-1 filing fee imbalance is not merely inequitable—it actively encourages speculative and low-merit claims. Claimants face minimal financial exposure, while respondents incur immediate and significant costs simply by being named.unsupported claims. The calculus

is well understood by experienced plaintiff's attorneys: the cost of defending even a meritless claim—forum fees, outside counsel, internal disruption, and management time—routinely exceeds the cost of a nuisance settlement. Firms pay not because they violated any regulation, but because the economics of the forum make capitulation cheaper than vindication. That is not dispute resolution. It is an extortion structure with regulatory imprimatur.

D. Required Action

- Require in cases with awards a limited listing of only factual findings, rule application, and itemized damages. FINRA should not allow explained decisions to be used as precedent in successive arbitrations.
- Amend Rules 12904 and 13904 to impose enforceable content standards.
- Cap attorney fee awards relative to claim size.
- Require pro-rated billing based on actual hearing time used.
- Equalize filing fees or materially increase claimant contributions.
- Implement mandatory fee-shifting for frivolous or ineligible claims.

III. Failure to Provide Effective Early Case Disposition

A. The System Lacks a Functional Gatekeeping Mechanism

FINRA arbitration forces parties to litigate claims that would be dismissed at the pleading stage in any court. This is a fundamental design failure. The absence of a meaningful motion to dismiss framework allows meritless claims to proceed unchecked.

B. Required Action

- Adopt a Rule 12(b)(6)-equivalent standard for dismissal.
- Permit pre-answer motions addressing eligibility and legal sufficiency.
- Require immediate dismissal of improperly named respondents.

Without these reforms, FINRA is effectively endorsing inefficient, cost-driven settlements rather than merit-based outcomes.

IV. Reputational Leverage Through Disclosure Rules

A. Form U4 Disclosure Is Being Weaponized

Mandatory disclosure of allegations—regardless of merit—creates immediate reputational harm that cannot be reversed. This is not a neutral reporting requirement; it is a leverage mechanism routinely exploited in settlement negotiations.

B. The System Encourages Coercive Settlements

Firms and individuals are pressured to settle to mitigate reputational damage, not because claims have merit. Each settlement generates additional disclosures, compounding the problem.

C. Required Action

- Distinguish clearly between allegations, settlements, and adjudicated findings.
- Expand expungement and allow confidential resolution where appropriate.
- Prohibit the use of unproven allegations as a basis for subsequent claims.

V. BrokerCheck Data Failures and Abuse of Party Naming

A. FINRA Maintains Inaccurate Public Records

FINRA's refusal to allow post–U-5 corrections create known inaccuracies in BrokerCheck. These inaccuracies are not benign—they directly drive improper litigation behavior. A firm cannot go back to FINRA Form U-4 and place a termination date on an Associated Person once a Form U-5 is filed. Many small firms with limited staff often forget to go to Form U-4 and place the termination date on that form when they are thinking "file Form U-5" to terminate the Associated Person. Unfortunately, many firms show departed Associated Persons as still working for them when they were terminated years earlier. If the Associated Person is named in an arbitration based on actions at their current firm, the BrokerCheck will still show the person working at the former firm and it is highly likely that former firm will be named in the arbitration even though they had nothing to do with the asserted violative activity.

B. Plaintiff Strategy Exploits Known Data Defects

Firms are routinely named based solely on outdated or incorrect employment data. This is a predictable and preventable problem. The current system effectively subsidizes this conduct by imposing immediate costs on wrongly named firms.

C. Required Action

- Allow correction or supplementation of BrokerCheck employment records.
- Require documentary support for naming each respondent at filing.
- Mandate early adjudication of "wrong respondent" issues.
- Require fee reimbursement when firms are improperly named.

VI. Misapplication of the Six-Year Eligibility Rule

FINRA's failure to clearly enforce the six-year eligibility rule has led to inconsistent and improper application.

Required Action

- Codify the rule explicitly as a statute of repose.
- Require strict dismissal of claims outside the six-year window.
- Prohibit reliance on equitable doctrines to revive ineligible claims.
- Shift costs to claimants who assert time-barred claims.

VII. Delete Filings on Firms With No FINRA Standings

FINRA arbitrations are often filed against firms that are bankrupt, insolvent, or no longer in business. These arbitrations show in the FINRA record as an "unpaid arbitration claim." FINRA records should delete firms with these or similar conditions from the "unpaid claims listing." Claimants filing such action very well know they will not receive any recovery. They are filing only in the "hope" of something happening in the future although knowing it is highly unlikely. Including firms of this type misrepresents the number of firms who, though not subject to those conditions, failed to pay an arbitration claim. This distortion from improperly reporting unpaid arbitration unjustly characterizes the industry as irresponsible and negligent.

Required Action

Alter the statistical reporting of unpaid arbitration claims to eliminate filings on firms that are bankrupt, insolvent or no longer in business.

VIII. Reforms FINRA Must Not Adopt

Do not eliminate caps on attorney fee awards. Uncapped fees compound the settlement-coercion dynamic that already disadvantages respondents and further decouple cost exposure from the actual size and merit of claims.

Do not weaken or narrow existing motion-to-dismiss grounds. FINRA should expand them, as argued in Section III, not contract them in deference to claimant-side pressure.

Do not permit punitive damage awards without written explanation of the specific conduct warranting punishment, the applicable standard applied, and the basis for the amount assessed. Unexplained punitive awards are indefensible in any legitimate adjudicatory context.

Do not expand customer election rights to compel FINRA arbitration in the absence of a contractual arbitration clause. Arbitration is a consensual mechanism. Allowing unilateral customer election where no agreement exists is a regulatory imposition that bypasses contract law and removes a firm's ability to seek judicial resolution of disputes it never agreed to arbitrate.

IX. Conclusion

FINRA's arbitration forum is operating with systemic deficiencies that are widely recognized but insufficiently addressed. The issues outlined above are not marginal—they go to the core integrity of the system.

If FINRA does not implement meaningful structural reforms, the forum will continue to produce inconsistent, opaque, and economically distorted outcomes. That trajectory is unsustainable. FINRA has the authority—and the obligation—to correct these failures.

Respectfully submitted,

Philip Ciantro

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Wealth Space Asset Management CRD 127507
Chief Executive Officer/Chief Compliance Officer