PATRICK CAPITAL MARKETS

EXECUTING THE POSSIBILITIES

April 28, 2026

Submitted via https://datacollection.fnrw.finra.org/?notice_ref=378481 only.

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:

Patrick Capital Markets, LLC ("PCM") appreciates the opportunity to comment on Regulatory Notice 26-06. PCM is a FINRA member broker-dealer headquartered in St. Louis, Missouri, that participates in the distribution of alternative investments, including Delaware Statutory Trusts, private placements, and other Regulation D offerings. PCM does not hold customer accounts, and our role is transactional in nature, meaning our role ends at the closing of the investment transaction.

PCM supports efforts to improve the fairness and efficiency of FINRA's arbitration forum. From our experience, several features of the current process can blur the distinction between a broker-dealer's regulatory obligations at the time of recommendation and later events outside the broker-dealer's control. For firms operating in the alternative investment space, that distinction is critical.

A broker-dealer's obligations are significant, but they are not unlimited. Firms must exercise reasonable diligence, care, and skill when making recommendations; maintain supervisory systems reasonably designed to achieve compliance; and ensure that communications with investors are fair and balanced. See, e.g., Exchange Act Rule 15l-1 (Regulation Best Interest), FINRA Rules 2111, 3110, and 2210. In the private placement context, FINRA has also made clear that firms must conduct a reasonable investigation of the issuer and the securities they recommend. See Notice to Members 10-22 and Regulatory Notice 23-08. Those are time-of-recommendation and time-of-sale obligations. They should not be converted into open-ended liability for later issuer misconduct, business failure, or market deterioration.

PCM respectfully offers the following recommendations:

1. Clarify that arbitration claims should be judged based on the broker-dealer's conduct at the time of the transaction.

In many cases involving alternative investments, claims are driven primarily by poor investment performance or later issuer misconduct rather than by any identifiable failure in the broker-dealer's process at the time of recommendation. That approach risks imposing liability based on hindsight. A broker-dealer should be evaluated based on what it knew, or reasonably could have known, when it performed diligence, made the recommendation, and provided disclosures. Arbitration claims should not include events that happened after the broker-dealer role ended at the closing of the investment transaction, and therefore they could not have been foreseen or controlled.

An investment may underperform for a multitude of reasons, but an underperforming investment does not establish that the broker-dealer failed to perform its responsibilities prior to and during the transaction. The current process allows for arbitrators to exercise discretion in determining when the six-year eligibility timeline begins, it allows the claimant to effectively file an arbitration at any point once they have determined misconduct or mismanagement by the issuer, then make false claims of inadequate due diligence or unsuitable recommendations on the part of the broker-dealer even though that information was not available at the time of the transaction. The time and the cost to defend for a broker-dealer becomes monumental and many times they are forced to settle instead of seeing the process through. Claimant council understands this process very well.

2. Amend the six-year eligibility rule to function as a true repose period measured from the transaction date or the last alleged act or omission.

PCM supports clarifying Rules 12206 and 13206 so that the six-year eligibility period is measured from the date of the transaction, or at most the last alleged act or omission giving rise to the claim. This clarification should require any claim brought and accepted into FINRA for Arbitration should specify the date of the act or omission giving rise to the claim. This would reduce stale claims and better align with the practical reality that broker-dealers' books and records obligations are not indefinite. It would also reinforce that arbitration should focus on the broker-dealer's conduct when the transaction occurred, rather than on later developments that could not have been predicted or controlled.

3. Require claimants to plead realized, cognizable damages.

Claims should not proceed where the alleged harm is speculative, contingent, or not yet realized. A reduction in distributions, a decline in estimated value, or dissatisfaction with performance—

without more—should not automatically support an arbitration claim against the broker-dealer. Requiring a claimant to identify actual, realized damages in an investment with a broker-dealer in which they are seeking insurance would improve fairness and help ensure that the forum is used for ripe disputes rather than for leverage to get a quick settlement based on defense costs alone.

4. Provide clearer guidance on what constitutes reasonable due diligence in private placement cases, creating a Safe Harbor for "reasonable" diligence.

FINRA's existing guidance, particularly Notice to Members 10-22 and Regulatory Notice 23-08, is helpful, but additional clarity would benefit both member firms and arbitrators. PCM would support a framework under which a firm can demonstrate a reasonable diligence process—including review of offering materials, investigation of the issuer and principals, consideration of material risks, and supervisory review—receives the benefit of a presumption that it satisfied its obligations. Therefore, creating a Safe Harbor or protocol for firms who can rely on that as protection from claimants who are looking to broker-dealers to be their insurers.

A proper claim should identify a concrete, pre-exiting red flag that the broker-dealer could have discovered through reasonable diligence. When a claim is built on facts that emerged only after the transaction closed, it shifts responsibility away from the issuer's later actions and places it on the broker-dealer, even though the broker-dealer had no control over what happened after the offering. A safe harbor would better reflect the broker-dealer's actual role, reward firms that conduct meaningful diligence, and allow FINRA to focus on claims where a real, identifiable diligence failure existed at the time of sale. That would better focus cases on whether there was an actual failure in the firm's process, rather than allowing an inference of liability simply because the investment later performed poorly.

5. Expand the grounds for prehearing dismissal in limited circumstances.

PCM believes Rules 12504 and 13504 could be improved by allowing prehearing dismissal where a claim fails to allege any actual damage, is clearly outside the eligibility period, or fails to identify a concrete theory connecting the alleged broker-dealer misconduct to the investor's losses. Additionally, we would request expedited dismissal considerations if a member firm has satisfactory, conclusory evidence to refute and contradict a claimant's statement of claim. This would not prevent meritorious claims from proceeding. It would, however, reduce the cost and burden of litigating claims that are deficient on their face.

The excessive costs of defending an arbitration often exceed the cost of settling the claim, even claims that lack merit. Completing the full arbitration process requires the broker-dealer to bear substantial legal fees, expert costs, and internal time to even get to the hearing. That time and cost burden creates real pressure to settle the arbitration regardless of the strength of the claim.

This unevenness is one of the main reasons weak claims persist. Claimants' counsel understands that even a defensible case can become economically difficult to litigate because the cost of

reaching the end of the process is so high. Moreover, these direct costs do not account for the significant cost borne by member firms, including the time required to respond to FINRA inquiries, fulfill discovery obligations, and manage other resource intensive demands particularly for smaller firms that must divert personnel from revenue-generating activities to meet regulatory requirements. That reality encourages filings that are designed less to prove liability than to produce a settlement in arbitration because the respondent broker-dealer is forced to make a business decision rather than a merits decision.

Conclusion

In PCM's view, these changes would better align FINRA arbitration with the actual regulatory role of a broker-dealer. A distributing broker-dealer is responsible for reasonable diligence, appropriate recommendations, fair disclosure, and supervision. It is not a guarantor of issuer performance and should not be treated as one when losses arise from events that occurred after the transaction and outside the firm's control. Without meaningful change to the arbitration process, compliant member firms like PCM will continue to decline in numbers and close their doors.

PCM appreciates FINRA's consideration of these comments and would welcome continued dialogue on ways to improve the arbitration process for all participants.

Respectfully submitted,

Patrick Capital Markets, LLC

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