PIABA
PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

piaba.org
888-621-7484
1300 McGee Dr, Ste 112, Norman, OK 73072

June 11, 2025

Via Email Only @ pubcom@finra.org

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

RE: Comment Letter Regarding FINRA Regulatory Notice 25-04 / FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons

Dear Ms. Mitchell:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in in securities arbitration and litigation. Since its formation in 1990, PIABA has promoted the interests of public investors in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members represent and advocate for investors harmed by fraud, misconduct, and the damage caused by members of the securities industry who put their interests ahead of their clients. As a result of representing the public investors, PIABA is in the unique position to uncover patterns of conduct and regulatory inefficiencies that lead to customers being misled, misinformed, or mistreated.

Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") particularly relating to investor protection issues. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews to protect the rights and fair treatment of the investing public.

<u>Background</u>

PIABA agrees substantial improvements can be made to modernize the FINRA Rules and regulatory landscape to better address the risks to investors and the markets. However, PIABA believes that any efforts to modernize FINRA Rules and standards must *prioritize* and *strengthen* investor protection. FINRA's notice is admittedly rather broad, but PIABA suggests several areas that FINRA should focus on in modernization efforts to balance the interests of protecting the investing public and integrity of the capital markets.

In short, PIABA supports a variety of common-sense amendments and improvements that will enhance investor protection, but PIABA encourages FINRA to ensure that any considered changes would prioritize the strengthening of investor protection and integrity of the markets. PIABA looks forward to the opportunity to comment on any future proposals.

I. Remote Inspections

In 2024, FINRA launched its voluntary, three-year Remote Inspections Pilot Program (the "Pilot Program"), allowing eligible member firms to meet their inspection obligations under FINRA Rule 3110 without conducting on-site visits. While we understand the intent to modernize regulatory oversight in a remote work environment, PIABA submits this comment to express strong concerns that movements towards entirely remote and disconnected supervision and inspections undermine FINRA's foundational mission of investor protection.

The flexibility granted by the Pilot Program creates a significant gap in supervision, particularly for representatives operating out of residential or remote offices. This structure increases the risk of misconduct, including sales abuses and regulatory evasion, especially in cases where representatives work in isolation without direct, in-person oversight.

In prior comments, PIABA highlighted numerous regulatory actions involving brokers who engaged in misconduct—such as "selling away" or orchestrating Ponzi schemes—from remote, often one-person offices. These cases, cited by both FINRA and the SEC, underscore the heightened supervisory challenges such environments pose. *See* PIABA Comment Letter to Vanessa Countryman, File No. SR-FINRA-2022-019 (November 22, 2022), pp. 3-4. Given this reality, reducing or eliminating on-site inspections for such locations amplifies fraud probabilities and weakens investor safeguards.

FINRA's position, that firms can rely on remote surveillance and technological tools to supervise representatives, fails to fully address the limitations of such methods. As PIABA has previously noted, observing certain red flags requires physical presence. For example, in-person audits allow compliance personnel to observe indicators of potential misconduct—such as signs of financial excess, physical marketing materials for unauthorized investments, or other evidence of off-the-books activity. These types of risks are difficult, if not impossible, to detect remotely.

We acknowledge that remote supervision tools can complement a firm's oversight framework. However, they should not replace in-person inspections—particularly for residential supervisory locations. At a minimum, these locations should be subject to annual, unannounced, in-person audits. Even inspections every three years would be preferable to eliminating them entirely. To suggest otherwise is to accept a diminished standard of oversight and, by extension, diminished investor protection.

We urge FINRA to reconsider the Pilot Program's structure and adopt more robust safeguards to ensure that all investor-facing offices, regardless of location, remain subject to effective and meaningful supervision.

II. Account Statement Modernization

PIABA has noticed concerning trends of investors being unable to track their investments recommended to them by members and their associated persons. PIABA believes member firms ought to be required to modernize the brokerage account statements they provide their customers to include insurance products and non-conventional investments ("NCIs"), among other things, that their registered representatives sell to their brokerage customers, especially when the member or associated person receive compensation for the sale of those investments or they are sold or held through the same brokerage or affiliated entities.

As the financial services landscape continues to evolve, so too must the tools and disclosures investors rely upon to make informed decisions. Today's investors are often sold a variety of products ranging from diverse portfolios that span traditional securities such as stocks, bonds, ETFs, and mutual funds, as well as complex investment products. These more complex investments include products such as insurance-based products (e.g., variable annuities and indexed universal life policies), and NCIs such as private placements, real estate investment trusts (REITs), or alternative funds. These products are frequently sold by the same registered representatives under the umbrella of a single broker-dealer or affiliated entities. Yet, these products are often excluded from the investor's regular brokerage statements, creating fragmented and potentially misleading representations of their financial position.

From a compliance and supervisory perspective, integrated reporting allows firms and regulators to better monitor for sales practice abuses, overconcentration, best-interest or suitability type concerns, and improper switching between product types. When products are omitted from account statements, it becomes more difficult to identify red flags or patterns of misconduct. Likewise, from an investor perspective, it creates a confusing, fragmented view of their investments, especially seniors and other vulnerable investors. In PIABA's experience, retail investors face confusion and harm due to their inability to follow their investments status, performance, and a variety of complex name changes and corporate actions.

The financial industry today possesses the technological capabilities to incorporate these products into comprehensive, unified statements. Many broker-dealers already maintain back-end data systems that track these holdings for internal use or compensation purposes. Extending this data to investor-facing statements is a logical and achievable next step. Moreover, doing so would promote consistency across firms and reduce investor confusion when comparing offerings. In addition, investors should be provided an opportunity for efficient electronic access to account statements and tools to fully track their investments.

Should FINRA consider enhancements to Rule 2231 and related guidance, I respectfully recommend that it explicitly require the inclusion of insurance products, non-conventional investments, and other products sold or held through affiliated entities in customer account statements. Doing so would modernize account disclosures, strengthen investor protection, and align reporting practices with the realities of today's financial markets.

III. Issues Regarding Collection and Storage of Electronic Communications

Associated persons of member firms now have access to a nearly endless number of options to communicate with customers—including text messaging, WhatsApp, and other internet-based services. These "alternative" and often unapproved and unsupervised messaging platforms are increasingly being used to engage with customers. PIABA members have observed a troubling rise in misconduct, including "selling away" and material misrepresentations, that occur via these unofficial and unmonitored communication platforms. These methods enable associated persons to communicate with customers in ways that circumvent regulatory oversight and firm compliance functions.

A. Communication Platform Disclosure

To address this risk, associated persons should be required to disclose all communication platforms they use to engage with clients, in the same manner they are currently obligated to disclose outside business activities. Member firms and regulators must strictly prohibit the use of any non-disclosed or unmonitored communication methods. Moreover, there should be a presumption of impropriety associated with the use of any undisclosed communication platform—creating a liability framework that shifts the burden to the associated person and firm. This deterrent would reduce misconduct and protect investors from individuals attempting to evade supervision.

B. Record Retention on Separation

In addition to proactive monitoring, member firms should be required to obtain a forensic copy of all electronic communications between associated persons and customers on an annual basis, or at a minimum upon the termination of an associated person's employment. These records often play a critical role in FINRA arbitration proceedings. Unfortunately, firms frequently claim that relevant communications are unavailable because they are stored on an associated person's personal device, allegedly beyond the firm's control. Courts, however, have repeatedly held that employers can and must produce such records where relevant. *See, e.g.*, *In re Gonzalez*, 2022 WL 17583628, at *8 (S.D. Fla. Aug. 8, 2022) (citing *Matter of Skanska USA Civ. SE Inc.*, 2021 WL 4953239 (N.D. Fla. Aug. 5, 2021) and *State Farm Mut. Auto. Ins. Co. v. Precious Physical Therapy*, 2020 WL 7056039 (E.D. Mich. Dec. 2, 2020)).

C. Reasonably Accessible Record Storage Standards

Member firms should not be permitted to ignore their supervisory obligations while benefiting from the very misconduct they fail to prevent. Member firms often resist producing documents that are presumptively discoverable under the FINRA Discovery Guide, citing undue burden based on their own poor recordkeeping practices. Specifically, firms claim that searching for responsive documents is difficult because records are not stored in a searchable electronic format. This problem is entirely self-created. In the modern era, virtually all documents originate in digital form and can easily be made searchable. Firms that convert documents to paper and then re-scan them without using OCR software embrace inefficiency to deliberately obstruct the discoverability and usability of their records. This conduct frustrates both regulatory oversight and the fair administration of arbitration. It is inconsistent with the "high standards of commercial honor and just and equitable principles of trade" that FINRA demands from its Members. FINRA Rule 2010.

FINRA should modernize its expectations and require member firms to store all documents in standardized, searchable formats—such as PDF/A—which many courts now require. Doing so would reduce regulatory burden, enhance document accessibility for customers and regulators, and ensure that firms cannot manipulate record formats to avoid producing usable documents.

IV. Issues Regarding Commissions/Fees and Trade Cost Disclosures

FINRA Members now fail to provide transparency surrounding the costs associated with individual transactions. These costs include commissions, mark-ups and mark-downs, and execution prices assigned to trades as compared to the open market bid and ask values. While public investors often understand that commissions may be incurred on a specific trade, they often lack a clear understanding of the form of commission, or how it affects the profitability of a trade. In the case of mark-ups and mark-downs, public investors are often unaware that their firm might be charging them more, or providing less, than the firm received in a corresponding and underlying transaction. The aggregate costs of any commission or fees are often difficult for investors to track and understand, and Members should provide investors with information and data regarding the aggregate trading costs on a periodic basis through account statements or confirmations. Members already maintain this type of data and information electronically, and there would be minimal burden in providing such important data to customers.

As with many aspects of the relationship between customer and member firm, full and fair disclosure should be the guiding principle. Member firms should be required to disclose, in a clear and conspicuous manner, the precise commission paid on all trade confirmation slips. Member firms are already required to maintain this information, so including the data on a confirmation slip would not present any additional burden on firms or regulators. By contrast, providing this disclosure would enhance customers' understanding of the true costs of trading and would enable them to make more informed decisions. Moreover, firms could offer lower transaction costs as a competitive advantage to benefit themselves in the marketplace. Increased competition, and lower consumer costs, are both benefits that support requiring disclosure.

The same information should be included for any mark-ups or mark-downs applied to any trade. Investors deserve to know how a firm's internal trading processes affect their personal trading costs, and when and how a firm is charging them an amount different than what was available on the open market, and the percentage the customer is being charged.

Finally, member firms should be required to provide the intraday high and low trading prices for any relevant security on a confirmation slips. While firms are not currently obligated to provide "best execution," many trades for retail investors are executed at prices that fall at or beyond the high or low of the trading day. This practice significantly benefits the firm while disadvantaging the customer. Requiring firms to disclose the day's trading range would give investors valuable insight into the quality of the execution received. While such data is readily available from public electronic sources, firms will not voluntarily provide it, as doing so would underscore the profitability of their trade execution practices. However, if such disclosure were required industry-wide, firms could virtuously compete by delivering superior execution quality.

In summary, FINRA member firms should be required to provide the highest level of transparency in their dealings with retail customers. Transparency promotes investor protection and fosters informed decision-making. Given the minimal burden on firms and the substantial benefit to the investing public, these suggestions deserve urgent and favorable consideration.

V. Modernizing "Recommendations" Across Various Communication and Social Media Platforms.

As registered representatives increasingly rely on digital communication platforms, including social media and messaging apps, to engage with customers, it is critical that FINRA's Rules and regulatory guidance reflect the realities of today's communication landscape. Advisors may use tools like LinkedIn, WhatsApp, iMessage, and Instagram not only for general branding but also for sharing market updates and personalized commentary or recommendations. FINRA's current regulatory framework, which largely centers on traditional and firm-controlled communications, presents challenges in monitoring, supervision, and compliant recordkeeping in this evolving environment.

FINRA's regulatory guidance as to what constitutes a "recommendation" under Rule 2111 or Regulation Best Interest is necessarily broad to encompass the many ways that firms and their representatives can solicit transactions and investment strategies with their customers. While PIABA agrees with this broad-based approach, FINRA's Rules and guidance should continue to clarify that recommendations do not only occur through traditional communication channels.

NASD Notice to Members 01-23 (released 24 years ago) discussed and confirmed that recommendations made through electronic communications constituted recommendations under NASD (now FINRA) Rules, and it gave examples of types of electronic conduct that would be considered a recommendation. FINRA then issued Regulatory Notice 17-18 which discussed social media in a compliance and regulatory context. These types of clarifications should continue and should be updated to encompass current communication activities.

To effectively modernize its rules, FINRA should consider continuing to establish clear, platform-agnostic guidance that confirms that "recommendations" can occur across various digital formats and communication methods. Additionally, FINRA could encourage or endorse the use of third-party compliance technology solutions that enable real-time monitoring and archiving of all digital communications with customers or potential customers. By doing so, FINRA can help ensure that investor protections remain intact in this age of modern communication.

VI. Electronic Delivery of Offering Materials and Disclosures

As brokerage firms become more reliant on digital tools in client interactions it is essential that FINRA remind its member firms that the use of these technologies does not relieve them of their core regulatory obligations. Specifically, we urge FINRA to issue clear and updated guidance emphasizing that electronic delivery of a prospectus or disclosures does not replace full fair and balanced disclosure obligations, and electronic signatures or "clickwrap" acknowledgements do not substitute informed consent or understanding. These digital processes and their myriad disclosures and disclaimers cannot immunize firms against verbal misrepresentations or misconduct, and firms still have supervisory responsibilities to ensure their employees are complying with FINRA rules.

The convenience of delivering disclosure documents electronically does not in any way diminish the obligation of brokers and brokerage firms to provide full and fair disclosure, including meaningful explanations of product features, costs, risks, and conflicts of interest. Simply sending a prospectus via email or secure link does not fulfill the requirement to ensure that customers understand the nature and implications of the products being offered. Electronic signatures are a functional equivalent of handwritten signatures, but they do not establish that a customer fully understood the investment or transaction.

Member firms must continue to take steps to ensure that customers are truly informed, and that consent is meaningful, regardless of whether the process is conducted electronically or in person. The delivery of these electronic prospectuses creates new challenges and hurdles for firms that were not present in an in-person meeting. The electronic process does not allow the same type of opportunity for customers to ask questions or about the investment itself or anything they may read on the prospectus. This hands-off process will require broker-dealer firms to take extra steps to ensure the firm has made full and fair disclosures, and also to ensure that there is informed consent on the part of the customer. We urge FINRA to remind broker-dealer firms that this more convenient electronic delivery method brings with it more challenges and the need to update their procedures to ensure full and fair disclosure.

Simply sending clients a prospectus with risk disclosures and disclaimers that contradict oral representations made by a registered representative of the firm cannot insulate the firm from liability for those oral representations. The integrity of verbal representations must match the content of written materials, whether delivered electronically or otherwise. Investors should not be left with no recourse simply because a misleading investment pitch was followed by a stack of fine print delivered via email. Supervisory systems must be adapted to address risks inherent in electronic interactions, including the need to monitor and document oral communications, track electronic disclosures, and ensure consistency across verbal and written representations. FINRA should make clear that firms are expected to supervise digital engagement with the same rigor as traditional channels.

VII. Common Sense Insurance

PIABA strongly urges FINRA to require all member firms to maintain appropriate liability insurance. Our proposal addresses a long-standing and well-documented source of investor harm: the epidemic of unpaid FINRA arbitration awards. We also recommend that respondents in customer arbitration matters be required to disclose, in confidence during discovery, the existence and extent of any insurance coverage. Such information should remain inadmissible at the hearing.

The rationale for insurance is simple: financial professionals and firms that harm investors should not be able to walk away from responsibility simply because they lack the means to pay an award. The current system permits firms and FINRA members to skirt responsibility. Many firms operate without any liability insurance, and some even structure themselves with no intention of satisfying adverse arbitration awards. In these cases, aggrieved investors—often retirees with little recourse—are left empty-handed.

This is not a new problem. The Government Accountability Office has reported that a significant number of arbitration awards go unpaid. FINRA has the authority to suspend brokers and firms for non-payment, but that sanction provides little help to investors once their money is gone. Enforcement remedies only go so far if there are no assets or insurance proceeds to satisfy awards.

PIABA has written extensively on this issue. Attached please find our recent discussion on insurance.

Requiring insurance solves several problems simultaneously:

1. **Insurance ensures recoverability**. It dramatically reduces the number of unpaid awards by providing an external funding source when a firm fails or disappears.

2. **Insurance enforces discipline**. Insurers price risk. They require firms to implement compliance programs, reject known bad actors, and avoid risky behaviors that lead to claims. In effect, insurers act as a private market discipline mechanism.

3. **Insurance is commonplace and feasible**. States like Oregon and Oklahoma already require investment advisers to carry insurance. Major custodians like Schwab and Fidelity have also implemented insurance mandates for firms on their platforms. These requirements have *not* reduced access to financial advice, and the number of advisers in those jurisdictions increased post-implementation.

4. **Disclosure aligns FINRA with the broader legal system**. In federal court and nearly every state, parties must disclose the existence of insurance coverage. FINRA is an outlier in not requiring this. Allowing for confidential, non-evidentiary insurance disclosure in arbitration would promote fairness and efficiency.

5. **The market supports implementation**. Empirical data show that requiring even modest insurance coverage (e.g., $1 million per firm) does not drive professionals from the industry. If anything, mandatory insurance can enhance investor trust and attract more business to reputable, well-insured firms.

Congress, North American Securities Administrators Association (NASAA), and the SEC have called on FINRA to address unpaid awards. Insurance as a solution. The tools exist and the path for implementation is clear.

PIABA urges FINRA to act decisively: require all member firms to carry meaningful insurance and mandate disclosure of insurance coverage in FINRA arbitrations. Investors deserve a system that not only adjudicates claims but ensures justice is served.

VIII. FINRA Members Using Holding Companies to Escape Liability

FINRA currently permits non-member holding companies and non-associated persons ("Holding Companies") to own FINRA member firms. However, because these Holding Companies are not themselves FINRA members, FINRA states that it lacks authority to directly regulate their conduct or to require them to participate in FINRA arbitration proceedings. This remains true even where the Holding Company owns 100% of the FINRA member, is listed as a "Control Person" on the member firm's Form BD and exercises full operational control over the member's activities.

This situation presents a serious inconsistency. Under FINRA Rule 1011(b)(3), a Holding Company that controls a member firm meets the definition of an "associated person of a member." Despite this definition, FINRA does not consistently assert jurisdiction over Holding Companies, and when it does, arbitration panels often decline to enforce that jurisdiction. In other cases, Holding Companies that are compelled to participate in FINRA arbitration may seek relief in court, including temporary restraining orders, to avoid arbitration entirely. These tactics disrupt the FINRA arbitration process and undermine investor protection.

This is a pressing problem with real-world consequences. In January and February 2025 alone, millions of dollars in arbitration awards went unpaid due to the use of Holding Companies that controlled FINRA members but were not themselves subject to FINRA oversight or arbitration. In these instances, individuals and entities that own and control FINRA members continue to operate in the industry and benefit from their associations—while injured investors, including elderly and vulnerable individuals, are left without any meaningful opportunity for recovery, even after spending years pursuing claims through FINRA arbitration.

This gap in FINRA's jurisdiction causes substantial harm:

1. **Lack of Arbitrability** – Investors are unable to bring claims against Holding Companies, even when those companies are responsible for the conduct or solvency of the FINRA member.

2. **Lack of Regulatory Oversight** – FINRA has no effective authority to supervise or sanction misconduct by Holding Companies, despite their control over regulated member firms.

3. **Avoidance of Liability** – Holding Companies can avoid paying arbitration awards by closing broker-dealer subsidiaries with large liabilities and shifting operations to affiliated entities.

This problem arises from deliberate corporate structuring designed to avoid accountability, and FINRA's current rules do not adequately address it. The result is a regulatory framework that allows responsible parties to benefit from FINRA membership while avoiding the obligations that should accompany that status.

PIABA urges FINRA to revise its rules to close this gap. Specifically, FINRA should:

1. Require any individual or entity that owns or controls a FINRA member firm to submit to FINRA jurisdiction;

2. Mandate that Holding Companies and control persons participate in FINRA arbitration under Rule 12200, where they are alleged to have responsibility for investor harm;

3. Prohibit associated persons, owners, and control entities from remaining in the industry if they are affiliated with firms that fail to pay arbitration awards.

These reforms are necessary to protect investors and to ensure that FINRA arbitration remains a fair, effective, and enforceable dispute resolution process.

IX. **PIABA's Concerns Regarding FINRA's Unilateral Changes to Arbitrator Qualifications**

PIABA is deeply concerned by FINRA's recent, sweeping changes to arbitrator qualification standards — changes that were implemented without public notice, meaningful consultation, or adherence to FINRA's historically transparent and consensus-driven rulemaking process through the National Arbitration and Mediation Committee (NAMC). These abrupt departures from long-standing practice will likely shrink the arbitrator pool, introduce procedural inefficiencies, and ultimately harm investors seeking redress through the arbitration forum.

Historically, FINRA (and previously NASD) maintained arbitrator qualification standards that balanced educational achievement with real-world experience. For example, the **NASD Arbitrator Application Booklet (March 2003)**permitted candidates with two years of college-level coursework and five years of business or professional experience, including an exception for those without college credits, but with substantial relevant experience. FINRA's new standard now mandates a four-year college degree and restricts eligibility to individuals with "professional" work experience — narrowing the pipeline of qualified applicants and excluding many capable candidates, including small business owners and others with decades of meaningful practical experience.

This change risks severely limiting the availability of arbitrators, particularly in small and mid-size cities where the pool is already thin. As a result, FINRA is likely to rely even more heavily on "traveling" arbitrators — those assigned to cases far from their home jurisdictions — which increases scheduling conflicts and delays. PIABA has long expressed concerns that such arbitrators, especially repeat participants, may be more prone to industry bias and less reflective of the diverse perspectives necessary for a truly fair forum.

PIABA supports efforts to diversify and improve the quality of the arbitrator pool. However, raising educational and professional barriers in this way is counterproductive. Unlike juries in state or federal courts, FINRA arbitrators are now subject to stricter qualifications than jurors or even licensed financial professionals. For example, no college degree is required to sit for the Series 7 exam or become a financial advisor. It is unreasonable to assume that individuals without a college degree cannot effectively grasp or adjudicate the types of issues that arise in securities arbitration. Arbitrators with significant life, business, and community experience — yet who may not hold a degree — can offer invaluable insights and fairness to the process.

The fairness of FINRA arbitration is already a topic of concern, particularly given that the industry prevails in roughly 70% of customer cases, and nearly one-third of awards go unpaid. Instead of addressing these systemic imbalances, FINRA's changes appear to further tilt the process in favor of the industry — without input from the investing public or the broader arbitration community.

For these reasons, PIABA urges FINRA to: immediately halt implementation of the new qualification standards; open a public comment period to gather feedback from stakeholders; reassess the changes through the transparent NAMC process; and focus on reforms that broaden, rather than narrow, access to a diverse and capable arbitrator pool.

Investors deserve a fair forum. Procedural shortcuts and exclusionary policies undermine that goal. FINRA must do better.

CONCLUSION

In sum, PIABA supports a variety of common-sense amendments and improvements that will enhance investor protection, but PIABA encourages FINRA to ensure that any considered changes would prioritize the strengthening of investor protection and integrity of the markets. We urge FINRA to issue specific, enforceable guidance affirming that technological convenience must not come at the expense of investor protection. The core principles of fairness, transparency, and acting in the customer's best interest must remain intact and be upheld regardless of changes in technological advancements. PIABA looks forward to the opportunity to comment on any future proposals.

Sincerely,

Adam J. Gana
Public Investors Advocate Bar Association
President

Attachment