PIABA
PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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Via Email Only: pubcom@finra.org

Ms. Jennifer Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 25-06 – Proposed New Rule on Facilitating Capital Formation

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.

Background

FINRA Regulatory Notice 25-06 seeks public input on whether certain FINRA rules may be outdated, unnecessarily burdensome, or ripe for modernization in light of changes in market structure, technology, and capital formation practices. The notice also raises specific questions about the Capital Acquisition Broker (CAB) framework, research analyst regulations, and rules governing private placements, underwriting, and public offerings.

While PIABA supports thoughtful regulatory modernization, we are deeply concerned that many of the questions posed in this Notice appear to be framed toward easing compliance burdens for firms at the potential expense of investor protection. In particular, proposals to expand CAB authority, reduce disclosure obligations, or create new exemptions from longstanding investor safeguards risk rolling back critical protections that shield retail investors from fraud, misrepresentation, and opaque products.

PIABA believes that FINRA's primary mandate must remain the protection of investors—especially retail and retirement investors who are often most vulnerable to conflicts of interest, high-fee products, and weak enforcement. Any regulatory changes aimed at facilitating capital formation or promoting innovation must be matched with equally robust measures to ensure fairness, transparency, and accountability. Our responses reflect this core principle throughout.

PIABA has choosen to respond to specific items in FINRA 25-06 as sets forth below. While this notice is asking for ideas generally, without specific rule proposals, it is difficult to give specific concrete positions. Generally speaking, PIABA encourages FINRA to ensure that any changes made would prioritize the strengthening of investor protection and integrity of the markets and that any changes be done in small easily digestible rules that can be concretely debated before implementation. Finally, PIABA notes that its lack of discussion about a particular question is not tacit approval of its message.

A.1 Should CABs be permitted to engage in a broader range of M&A and private placement activities than currently specified in the CAB rules?

Expanding CABs' authority without imposing additional investor protection measures invites regulatory arbitrage and risks investor harm. The current narrow CAB scope exists to limit exposure to complex and opaque transactions. Broadening their role—especially in capital-raising contexts—must be matched with stronger disclosure, conflict checks, and supervision mechanisms to ensure investors aren't drawn into risky deals without meaningful safeguards.

A.2 CABs may not act as an agent for secondary transactions involving unregistered securities, other than in connection with the change of control of a privately held company. Should CABs be permitted to act as placement agents in connection with other types of secondary transactions involving unregistered securities?

No. Secondary transactions involving unregistered securities are particularly opaque and high-risk. CABs are not currently subject to the full regulatory architecture necessary to mitigate those risks. Expanding this authority could subject retail or lightly sophisticated investors to heightened potential for fraud and abuse, especially in thinly traded or difficult-to-value assets.

A.3 CABs may act as an agent in connection with the sale of newly issued unregistered securities only to institutional investors, which does not include individual investors unless they own $5 million or more in investments. Should CABs be permitted to sell newly issued unregistered securities to less wealthy accredited investors that do not meet the $5 million threshold?

No. Loosening these requirements would undercut the very rationale for limiting CAB activities in the first place. Less wealthy accredited investors—even those meeting the $200K income or $1M net worth standard—are frequently ill-equipped to assess the risks associated with unregistered securities. The existing $5 million investment threshold provides a reasonable and necessary buffer to protect investors.

A.4 Are there any other aspects of the CAB rules that FINRA should modify that would further facilitate capital formation while protecting investors, and to better coordinate with the exemptions enacted by Congress and proposed by the SEC? For example, should CABs be exempted from, or subject to more tailored versions of, any other FINRA rules? Are there other activities in which they should be permitted to engage, or activities that should be subject to different conditions?

If any rule changes are contemplated, they must go hand-in-hand with investor protection enhancements. This includes:

- Expanded disclosures for all transactions;
- Broker-dealer type due diligence standards;
- Clear communication to investors about the limited supervisory obligations of CABs Investor protections must evolve in lockstep with capital formation initiatives.

A.5 Should FINRA create a tailored rule set for "finders" or other types of limited purpose broker-dealers who are otherwise required to comply with the same FINRA rules as full-purpose broker-dealers?

PIABA does not support any modifications that would allow for less supervision or a lessening of rules when it comes to the investing public.

B.1. Are FINRA's regulatory requirements around the conflicts attendant to research reports and research analysts appropriately tailored? How could the FINRA rules be more effective and efficient in relation to other regulatory requirements, including the Global Settlement? What is the Global Settlement's ongoing role in the regulation of research for the subject firms?

The existing framework remains necessary. The Global Settlement established structural protections that FINRA rules alone cannot replace. Its continued relevance ensures that research is not unduly influenced by investment banking interests. Repealing or weakening these protections would risk reviving the very conflicts that harmed investors in the past.

B.2. Are there aspects of the regulatory framework or particular requirements that may impede capital formation without a corresponding investor protection benefit? If so, which aspects?

Investor protection must remain paramount. Any regulatory change should be justified by empirical evidence and aligned with investor protection.

B.3. Do the disclosure requirements in FINRA's research rules provide useful transparency of material conflicts and other valuable information to investors when making investment decisions? Should the disclosure requirements be modified? If so, how?

Current disclosures are essential but could be improved. PIABA supports adding executive summaries of material conflicts at the beginning of reports and requiring historical performance metrics for analysts. More concise, user-friendly disclosures would empower retail investors to better understand products sold to them and allow for more meaningful investor education.

B.4. Are the remaining quiet periods established under Rule 2241 necessary in light of the effectiveness of the other provisions in the rule? How, if at all, should the quiet periods change?

Yes. Quiet periods remain essential in preventing inappropriate influence during critical offering phases. PIABA does not support changes that would shorten these periods without compelling evidence of reduced risk to investors.

B.6. Should there be other exemptions under Rules 2241 or 2242 based on firm size, business or customer base that are consistent with investor protection?

Not without evidence that such exemptions do not increase investor risk. Firm size should not dictate investor protection standards. Smaller firms must still be held accountable for fair and objective research practices.

C.1. Have there been any developments with Investment Programs that merit reconsideration of certain aspects of Rule 2310 to facilitate capital formation while protecting investors? If so, what are they and how should FINRA address them?

Yes—recent developments reinforce the need to strengthen, not weaken, Rule 2310. Non-traded REITs and other direct participation programs (DPPs) continue to harm investors due to high fees, lack of liquidity, opaque valuation, and conflicts of interest. The collapse of NorthStar Healthcare Income, which left investors with massive losses and little recourse, is a clear example of the dangers of loosening investor safeguards in these programs. FINRA should:

- Require enhanced product-level disclosures, including total fee loads and conflicts of interest;
- Mandate plain-language risk summaries at the point of sale;
- Prohibit DPP sales to retail investors unless they demonstrate clear understanding and risk tolerance suitability.

C.2. Have new or revised rules, ancillary to the capital formation rules, been introduced that render certain aspects of current Rule 2310 redundant or outdated? If so, what are those rules and what specific provisions of Rule 2310 are redundant or outdated as a result?

No. If anything, the persistence of investor losses in DPPs and unlisted REITs confirms that Rule 2310 remains vital. While other rules may address general supervision or disclosure, Rule 2310 uniquely targets product-specific risks and ensures core investor protections. No portions should be deemed redundant.

C.3. In addition to the recently proposed amendments currently under consideration, are there other changes to Rule 5110 that would further facilitate capital formation while protecting investors? If so, how should FINRA approach those issues?

Rule 5110 should continue to protect issuers and investors from excessive and hidden underwriting compensation. Any modernization must be grounded in transparency and comparability across offerings. To protect investors:

- FINRA should require clear disclosure of total underwriting costs to investors in plain language; and
- FINRA should evaluate whether "value-added" services used to justify higher fees actually serve investors or simply increase broker compensation.

C.4. Should any category of offerings currently subject to Rule 5110 (e.g., Regulation A offerings) be considered for review under an alternative filing requirement? If so, what type of offerings should be considered and what alternative filing requirements would be appropriate to support capital raising while protecting investors?

PIABA does not support reducing protections for Regulation A or similar exempt offerings. These products often target less sophisticated investors and lack the rigor of traditional public offerings. If any alternative filing mechanism is considered, it must:

- Preserve public transparency of offering terms;
- Maintain limits on compensation; and
- Ensure conflicts of interest are fully disclosed.

C.5. In reviewing underwriting compensation, FINRA considers, among other things, the size of the offering, the amount of risk assumed by the underwriter, and whether the offering is an initial or secondary offering. Should these factors or other aspects of FINRA's review of underwriting compensation or previous guidance with respect to such review be reconsidered or adjusted?

The existing factors remain relevant. However, investor exposure to cost should be a primary consideration. PIABA encourages FINRA to require:

- A maximum percentage cap on total offering costs;
- Prominent investor disclosures where compensation is above market norms.

C.6. In addition to the recently proposed amendments currently under consideration, are there other changes to Rule 5121 that would further facilitate capital formation while protecting investors? If so, how should FINRA approach those issues?

PIABA supports preserving the qualified independent underwriter (QIU) requirement. Any simplification must not weaken the substantive obligations on conflicted members. FINRA should consider:

- Enhancing QIU independence criteria;
- Prohibiting internal personnel from playing dual roles in conflicted offerings; and
- Requiring enhanced investor disclosures when QIUs are involved.

C.7. What, if any, other exemptions from filing should FINRA consider under Rules 5122 and 5123 that would further facilitate capital formation while protecting investors?

PIABA does not support additional exemptions. The private placement market already lacks transparency and investor protections. Filing requirements are essential for FINRA oversight and investor protection. Any further exemptions would:

- Reduce FINRA's ability to detect fraud;
- Obscure market data; and
- Weaken systemic protections in a rapidly growing segment.

D.1. Are there any specific FINRA rules or areas of the rulebook that commenters believe are outdated, unnecessarily complex or burdensome in a way that is disproportionate to their investor protection benefit, and that FINRA should consider streamlining or modernizing?

PIABA believes FINRA must carefully balance regulatory modernization with the preservation of investor protection. While some rules may be due for clarification or improved guidance, very few are burdensome in a way that outweighs their investor protection benefit.

However, PIABA supports:

- Modernizing language in rules to reflect digital communication tools, cybersecurity protocols, and remote supervision realities.
- Issuing interpretive guidance rather than reducing substantive requirements.
- Maintaining robust protections in areas such as supervision, communications with the public, and suitability, which are cornerstones of investor protection.

Streamlining must never mean weakening. FINRA should only consider changes when data shows investor harm would not increase—and where complexity alone, not substance, is the issue.

D.2. Are there areas of the rulebook where greater consistency with rules of other regulators (e.g., the SEC, CFTC, or state regulators) would enhance compliance efforts or reduce unnecessary burdens?

Yes, but only where investor protections are preserved or improved. Where FINRA rules impose duplicative documentation or procedural requirements that are substantively identical to those under SEC rules, harmonization may help compliance without increasing investor risk. However:

- FINRA should not align with other regulators if doing so would lower the standard of care owed to retail investors (such was the case in Notice to Members 18-08).
- In cases of inconsistency, FINRA should advocate for the higher standard to prevail. For example, a standard, uniform fiduciary standard for all financial professionals.

D.3. Are there rules for which changes in market structure, technology, business models, or investor preferences warrant updates to FINRA's approach or greater regulatory flexibility?

Yes, some rules could be updated to address new technologies and business models—but flexibility must never become a loophole. A few examples are:

- Digital communications and social media have outpaced existing supervision rules and discovery obligations in arbitration. FINRA should update guidance on recordkeeping and surveillance requirements for ephemeral messaging apps, social platforms, and AI-based investor communications.

- Remote work and virtual offices require updated supervisory frameworks—but not exemptions from oversight.

- Robo-advisors and AI-driven services need clear suitability and disclosure standards, especially when used in hybrid models with human advisors.

However, the push for flexibility should not be used to weaken the core tenets of investor protection. Every update must be matched with clear compliance expectations and rigorous enforcement tools.

D.4. Are there rules for which the costs of compliance are most significant and for which there are changes that FINRA could make to reduce those costs without materially diminishing investor protection?

PIABA generally does not support lowering compliance burdens unless changes are narrow, data-driven, and shown not to increase investor risk. If any compliance rules are shown to impose disproportionate costs:

- FINRA should consider standardized templates, model disclosures, or centralized portals to ease firm reporting.

- It should avoid scaling back supervision or training requirements, which are critical to preventing misconduct.

- FINRA should consult investor advocates before finalizing any cost-cutting reforms to ensure investors aren't left with weaker safeguards.

D.5. Are there rules or guidance that commenters believe create ambiguity or uncertainty in their application and that FINRA could clarify through rulemaking, FAQs or other guidance?

Yes. PIABA supports issuing **guidance or FAQs** in the following areas to promote clarity:

- Use of electronic communications, including texting, messaging apps, and third-party platforms.

- Expungement reform procedures, especially regarding timing, filing format, and objections from customers.

- Complex product disclosures, particularly for DPPs, structured notes, and alternative investments.

- Remote supervision, including expectations for off-site inspections and oversight of hybrid workforces.

However, such clarification should supplement—not replace—enforcement, and should not be used as an excuse for firms to avoid best practices in ambiguous areas.

D.6. Are there any areas where investors would benefit from greater consistency in firm disclosures or practices?

Absolutely. PIABA strongly supports greater standardization of disclosures in the following areas:

1. Alternative Investments (DPPs, REITs, structured notes): Use plain-English, standardized disclosures that address fees, liquidity, conflicts, and risks.

2. Customer Arbitration & Expungement: Require uniform notices about expungement requests and the investor's right to participate, along with outcomes.

3. Conflicts of Interest: Use short-form, side-by-side disclosures similar to those required under Reg BI's Form CRS.

4. Account Fees and Commissions: Create a "fee facts" summary akin to a credit card disclosure box, showing typical fees and how they are charged.

Greater consistency increases transparency, comparability, and investor confidence—particularly for retail investors navigating complex investment products.

D.7. Is there any additional data FINRA should obtain or provide to facilitate capital formation or to facilitate analysis of the regulatory framework?

Yes. PIABA strongly supports greater transparency and data accessibility—not only to support capital formation efforts, but more importantly to ensure regulators, investors, and policymakers can effectively identify and respond to systemic risks and misconduct. The current regulatory framework often operates in data silos, making it difficult to spot harmful trends before they result in significant investor harm.

We recommend that FINRA collect and publish the following additional data:

- Private Placement Metrics: Volume, sponsor/issuer names, firm participation levels, investor demographics (anonymized), and customer complaint frequency. This would allow stakeholders to better understand market trends and investor impact.

- Expungement Data: Detailed expungement statistics by case type, outcome, firm, and individual representative, including success rates for straight-in expungement requests. Increased public transparency is essential to address abuses of the CRD system.

- Arbitration Outcome Analytics: Regular publication of anonymized FINRA arbitration statistics by product type, firm, and procedural track (e.g., simplified, three-panel), including data on customer win rates, award sizes, and motions to dismiss.
- Product Suitability Red Flags: Aggregated data on firms with disproportionate customer complaints related to complex or high-commission products (e.g., non-traded REITs, DPPs, leveraged ETFs, variable annuities).
- Supervision and Disciplinary Metrics: Data on firms and registered reps with patterns of supervisory failures, particularly in connection with high-risk product sales or repeat arbitration filings.

Conclusion

In summary, PIABA urges FINRA to issue specific, enforceable guidance that complies with the principles of fairness, transparency, and acting in the customer's best interest. PIABA will continue to oppose any changes to rules and regulations that lessens supervisory and reporting responsibilities of broker-dealers, and exposes the investing public to biased information that puts the interest of the broker-dealer ahead of their investor clients.

Very truly yours,

Adam Gana, President Public Investors
Advocate Bar Association