Testimony of A. Valerie Mirko
Partner and Practice Leader
Armstrong Teasdale LLP[1]

Before the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Capital Markets

Hearing entitled:
"The Role of Self-Regulatory Organizations in U.S. Markets: Examining FINRA and the MSRB"

March 5, 2026

Chair Wagner, Ranking Member Sherman, and Distinguished Members of the Subcommittee,

Thank you for the opportunity to testify before you today and contribute to the important work of this Subcommittee. I am pleased to be here to discuss the role of self-regulatory organizations (or SROs) in the U.S. markets, with a focus on FINRA and the MSRB.

The U.S. capital markets are the best in the world. Part of the reason that they thrive is because of the thoughtful and smart regulation inherent in the U.S. securities regulatory framework. My point of view on this issue is informed by my 20 plus year legal career that includes over a dozen years as a securities defense attorney in private practice, as well as several years working with regulators and on regulatory coordination.

I am a partner at Armstrong Teasdale and leader of the firm's Securities Regulation and Litigation practice. In my day-to-day, I represent broker-dealers, investment advisers, and public companies subject to SEC investigations and other regulatory initiatives (e.g., investment adviser examinations). I also represent broker-dealers subject to FINRA investigations. In addition to representing public companies and industry firms, at times I represent executives subject to regulatory scrutiny. Prior to Armstrong Teasdale, I also spent several years as a partner at the global law firm of Baker McKenzie and, before that, as General Counsel of the North American Securities Administrators Association (NASAA). Earlier in my career, I also worked at two broker-dealers.

The importance of the broker-dealer industry in maintaining the health and vibrance of the U.S. capital markets relies on the SRO model, which in turn must be subject to government oversight. Through the SRO model, broker-dealers collectively assume responsibility for regulation of the industry while also maintaining investors' trust in the markets. The SRO model, however, also

[1] The views and opinions I express below are solely my own and do not necessarily reflect the views of Armstrong Teasdale LLP or the firm's clients.

relies on delegated authority by the government. Therefore, it is important that the SEC adequately supervises SROs and ensures that they operate with fairness, transparency and neutrality. My written testimony includes several recommendations to address fairness and fundamental due process concerns with respect to FINRA's enforcement program, rulemaking process, dispute resolution forum and overall governance.

Congress also has a responsibility to ensure that investor trust remains by overseeing regulators generally and evaluating SRO efficacy specifically. Therefore, reviewing the SEC's oversight of SROs—here, FINRA and the MSRB—is important, particularly to review whether these regulators are functioning consistent with their delegated authority and according to basic principles of fairness.

It is important to note, in the context of FINRA oversight, that the organization is entering the second year of its *FINRA Forward* initiative with a stated goal of modernizing its rulebook and enhancing compliance tools and strengthening fraud protections. This initiative has already resulted in greater transparency of long-standing FINRA operations. In this context, however, there is a role for Congress to play to make legislative changes to the overall framework.

In my written testimony, I include ten recommendations for Congress to consider implementing to strengthen the oversight of SROs. These recommendations are organized around five broad categories:

- Improving SEC and Board Oversight of SRO Governance
- Addressing Fairness and Due Process Concerns of SROs
- Eliminating SRO Inefficiencies and Duplication
- Increasing Fairness and Efficiencies in the Rulemaking Process
- Correcting the Weaknesses in FINRA's Arbitration Process

Smart, right-sized regulation is essential to ensure that U.S. markets remain fair, resilient and efficient. My goal with these recommendations is to preserve the strength and robustness of our capital markets so they continue to serve as a source of financial stability and opportunity for all Americans.

I welcome and look forward to your questions.

Appendix

Recommendations for Congress to Consider Regarding Oversight and Functions of Self-Regulatory Organizations

Improving SEC and Board Oversight of SRO Governance

Governance across self-regulatory organizations ("SROs," and for purposes of this testimony, SROs refer to, collectively, FINRA and the MSRB) should have greater consistency. SROs operate pursuant to authority delegated to them by the SEC with additional oversight from separate Boards of Governors. These separate Boards of Governors draw from industry and public members (collectively, "Board Members"). Each SRO's Board Members ultimately hold responsibility for the governance of the SRO, including approving executive compensation, changes to the rulebook and overall management. The Exchange Act, however, does not provide any specific requirements for SRO governance, and the SEC is not required to visibly participate. Therefore, in practice, each SRO's governance can vary depending on the SRO and its elected Board Members.

In order to make governance more consistent across each SRO and ensure appropriate SEC oversight of the organization at the highest level, Congress should consider amending 15 U.S.C. § 78o-3 – Registered securities associations to incorporate the following recommendations:

Recommendation #1: Require the SEC Chair or a delegated Commissioner to serve as an ex-officio or non-voting member of each SRO Board of Governors

- Currently, the SEC is not required (by statute or rule) to have any coordination with the leadership of each SRO.
- Day-to-day oversight of SROs is fragmented and, in the case of FINRA, occurs in multiple Divisions of the SEC with oversight primarily undertaken by the Division of Exams FINRA and Securities Industry Oversight ("FSIO") Examination Program.
- Therefore, in order to ensure alignment between the SEC and the SROs the SEC delegates authority to, the SEC Chair or a Commissioner should serve on the board of each SRO as an ex-officio or non-voting member.
- This will result in high-level, strategic coordination on pressing issues as well as strengthening alignment between the SEC and SROs.

Recommendation #2: Institute uniform SRO board composition and management requirements

- Both the FINRA and MSRB Board of Governors are composed of a majority of public governors and a minority of industry governors.
- However, each SRO operates with its own by-laws and varied board compensation requirements. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

(the "Dodd-Frank Act") contains specific requirements for MSRB board composition; there are no statutorily codified requirements for FINRA board composition.

- FINRA by-laws regarding board composition are vague and have no detailed requirements for Public Governors.[2] In comparison, the MSRB requires both public and industry board members to have nuanced and varied industry expertise.

- In addition, there are no term limits for the Chief Executive Officers of each SRO. In contrast, SEC Commissioners are subject to term limits as are members of each board. While it is important to have stability in leadership, there is value in the periodic, formal performance review that comes with appointment to serve an additional term.

- Congress should review the MSRB board composition requirements in 15 U.S.C. § 78o-4(b) and institute similar requirements for the FINRA Board of Governors, as well as consider instituting term limits for the CEO of each SRO.

Addressing Fairness and Due Process Concerns of SROs

One of the most important functions of an SRO is to monitor industry adherence to the rulebook, and in instances of non-compliance, enforce violations of the rules. Enforcement of SRO rules requires fundamental fairness and due process. Through its enforcement function, FINRA has the authority to suspend, prohibit or bar member firms and associated persons when instances of non-compliance are dramatic or egregious.

FINRA's authority to enforce—which exists pursuant to delegated authority—effectively allows FINRA to terminate a person's or firm's ability to operate in the industry, which in turn raises significant property and reputational interests that necessitate careful consideration and government protection of fairness and due process. As the regulatory landscape currently stands, firms cannot be expelled without SEC review and approval. Individual bars of industry representatives are not subject to the same level of regulatory scrutiny. Once FINRA has rendered a decision to bar an individual from the industry, that sanction becomes effective immediately.[3] Therefore, individuals are not able to obtain a stay absent persuading the SEC to grant extraordinary relief to stay the effectiveness pending the completion of the Commission's review. Because SEC review is an integral component of the statutory oversight framework, the absence of a uniform automatic stay across all industry expulsions rendered by FINRA can result in irreversible professional and economic harm prior to final SEC review. Even if a sanction is later modified or reversed, the interim deprivation may not be fully remediable.

A unified rule providing for an automatic stay of all bars and expulsions pending SEC review would strengthen procedural fairness and structural legitimacy. It would ensure that due process requires a full statutory review by a government official before a bar becomes operative and it would reinforce the SEC's role as the ultimate reviewing authority. By aligning the effectiveness

[2] FINRA by-laws assign industry Governors to specific seats: a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor, and an Investment Company Affiliate Governor, and three Small Firm Governors, one Mid-Size Firm Governor, and three Large Firm Governors.
[3] *See* SEC Release No. 34-103228 (June 11, 2025) approving a FINRA proposed rule change to stay the effectiveness of specified expulsions and FINRA actions. (Footnote added March 9, 2025)

of severe sanctions with the completion of SEC review, such a reform would enhance due process protection while preserving regulatory authority and investor protection.

Recommendation #3: Amend the Exchange Act* 15 USC § 78d-1(b) *and require SEC review before every FINRA bar or expulsion decision becomes effective

- Every bar or expulsion decision needs to be reviewed and approved by SEC.
- By requiring the SEC's review of these bars, individuals would receive the benefit of an additional and necessary layer of government oversight, helping to better safeguard their Fifth Amendment rights.
- FINRA should retain an added layer of investor protection recourse in the event of egregious misconduct: allow for a temporary restraining order ("TRO") or preliminary injunction ("PI") proceedings, through an appointed Article III judge, to obtain a bar or expulsion based upon the necessity to protect investors and the broader market.
- Individuals barred by FINRA should be entitled to the same protections (i.e., stay on bar pending SEC review and determination) as member firms.

Recommendation #4: Consider codifying a definition of "regulation by enforcement"

- At a basic level, regulation by enforcement is when an enforcement action involves certain conduct that market participants did not previously understand to be a violation of the federal securities laws despite these market participants' reasonable efforts to interpret existing laws, regulations, policies, and guidance from the SEC and other agencies.[4]
- In such instances, market participants would not have had an opportunity to provide comments or feedback on the apparent standard. The resulting standard is less likely to be effective because it lacks the practical on-the-ground industry perspective that would allow the new standard to work as intended.
- Congress should look at legislative solutions, such as this recommendation, to drive more transparency and efficiency in the FINRA enforcement process.

Eliminating SRO Inefficiencies and Duplication

Over time, as the capital markets have evolved and grown so has each SRO. At their core, FINRA and the MSRB are focused on protecting and strengthening the markets they regulate and by extension contribute to investor confidence and protection. The operations of each organization, however, now exceed the intended scope of their missions. Congress should direct

[4] *See* A. Valerie Mirko and Peter Chan, Recommendations to the SEC to Modify its Procedural Framework to Prevent Regulation by Enforcement, Financial Services Institute, January 2024 (available at: available at: FSI-Recommendations-to-SEC-prevent-Reg-by-Enforcement-2024-01-25-FINAL.pdf) *and* Supplemental Letter to SEC Chairman Paul Atkins from the Financial Services Institute, Oct. 31, 2025 (available at: Letter-Regulation-by-Enforcement-Supplement_and_Whitepaper-Atkins-20251031.pdf).

the SEC to undertake the following actions to understand the size and functions of each SRO, as well as study how to increase transparency in SRO operations.

Recommendation #5: Require the SEC to review all of FINRA's technology vendor responsibilities to ensure there are no duplicative functions, unnecessary programs or technology builds that should be done by other entities

- FINRA operates a wide variety of technologies that include well-known systems such as the Central Registration Depository ("CRD", as well as the analogous investment adviser utility known as the "IARD") and the Consolidated Audit Trail ("CAT"), along with lesser-known systems that FINRA is contracted to run.[5] This constitutes approximately 29% of the annual FINRA budget.[6]

- Although FINRA's annual budget provides limited details about many of these systems, there is no comprehensive public inventory of them, no clear justification for why each system is operated by FINRA, and no transparency regarding potential duplication of effort or inefficiencies across these systems.

- By conducting a review and developing a comprehensive inventory of each technology system operated by FINRA, the SEC can ensure FINRA's technology responsibilities do not encroach on its core functions or responsibilities.

Recommendation #6: Amend the existing GAO oversight report requirements to include specific oversight of FINRA enforcement

- The Dodd-Frank Act requires GAO to review the SEC's oversight of FINRA every three years, with scrutiny of eleven areas of oversight.[7]

- Notably, the GAO is not required to review the fairness and transparency of FINRA's Department of Enforcement.

- A review of FINRA enforcement should include a focus on procedural safeguards to prevent de facto standard setting through enforcement, as well as an understanding of internal criteria for expanding legacy matters or developing new case theories. Furthermore, the review should evaluate practices that promote complete fact development before advancing enforcement theories.

- Congress should review the GAO oversight report requirements and require, at a minimum, a review of FINRA enforcement.

---

[5] For example, the Conference of State Bank Supervisors contracted with FINRA to develop and maintain a mortgage licensing system. In 2025, FINRA's annual budget included an expected $110 million in contracting fees.
[6] *See* FINRA 2025 Annual Budget Summary
[7] Sec. 964 of the Dodd Frank Act requires the Government Accountability Office to report on oversight of national securities associations, including FINRA.

- The GAO report on oversight of national securities associations which should be expanded to include oversight of enforcement, provides an appropriate and efficient vehicle for incorporating the above review. This would preserve efficiencies of review.

Recommendation #7: Amend the Exchange Act to require SROs to publish an annual report and budget

- Both FINRA and the MSRB release an annual report and budget summary to members and the public, which is available on their websites. This is a hallmark of good governance, but it is currently done on a voluntary basis by SROs. Furthermore, the budget component remains at a summary level.

- Incorporating a requirement to publish an annual report and budget would codify existing voluntary practice and ensure more transparency. Congress should consider requiring line-item budget disclosure as well.

Increasing Fairness and Efficiencies in the Rulemaking Process

The financial services industry is rapidly evolving as it adopts new and novel technologies that continue to modernize its practices. These advancements have increased efficiency, strengthened surveillance capabilities and transformed the way market activity is conducted. SRO rulebooks, however, have not been able to keep up with these changes, which has resulted in rulebooks at odds with day-to-day operations of member firms. The existing rulemaking process, while robust, hinders the ability of SROs to update their rulebook in a timely manner and has resulted in a rulebook with inconsistent application across the industry. In order to accelerate modernization of SRO rulebooks, Congress should take the following actions:

Recommendation #8: Review delegated authority for rule approval and process for rule approval. Specifically recommend that the Commission has final approval over economically or systemically important rules whereas other rules that are being adjusted for inflation can be approved through simple notice to the Division of Trading and Markets

- Currently, only a limited scope of rules can be filed with the Commission for immediate effectiveness.[8]

- Congress should require the SEC to expand this scope of rules to include inflation adjustments and technical changes related to recordkeeping and document delivery preferences.

- Further, Congress should require final rule approval by a majority of Commissioners, rather than the Division of Trading and Markets.

- While the Division of Trading and Markets provides important and valuable technical expertise, oversight of significant rule changes should lie with Congressionally approved Commissioners to ensure proper oversight of rulemaking.

[8] 17 CFR § 240.19b-4.

Recommendation #9: Require a review of all outdated Regulatory Notices and Rules, as well as cost benefit analysis framework

- The complexities of the current rulemaking process make it challenging for FINRA to promulgate rules in a timely manner, particularly during active periods of rulemaking for the Commission itself.

- This dynamic has led FINRA to become reliant on issuing Regulatory Notices, FAQs, and responding to interpretive questions. Member firms utilize these communications to refine their compliance and risk programs, despite the fact that some were issued more than three decades ago when the industry was fundamentally different. Further, these documents are reliant on outdated cost-benefit analyses that do not reflect the current state of the industry.

- However, these communications are not rules and are subject to varied interpretation by industry members. In practice, this means that one member firm could interpret an issue differently than other firms and rules are not applied uniformly.

- In order to modernize the rulebook, it is essential for FINRA to review all issued guidance still in effect and update or retract guidance no longer applicable.

- Congress should require the SEC to undertake a retroactive review of all FINRA member guidance and rules every five years and submit a report to Congress with its findings.

Correcting the Weaknesses in FINRA's Arbitration Process

FINRA Dispute Resolution and FINRA have worked hard to modernize arbitration rules and processes, including through the Regulatory Notice just issued earlier this week. We applaud FINRA's efforts in this area and agree that further study, analysis and continued improvement will be valuable to both the industry and investors.

Recommendation #10: The SEC should conduct a study within the next 270 days to examine minimum requirements for arbitrators to ensure appropriate expertise and experience when deciding cases. Topics of the study could include:

- Evaluation of panelist qualifications and background, including both minimum experience as well as taking into account dated expertise (e.g., arbitrators who are not familiar with current rules).
- An increase in compensation for arbitrators and whether that could improve panelist quality.
- Feasibility of requiring panel chairs to be licensed attorneys.
- Potential to prohibit attorneys who represent or have represented claimants in prior FINRA arbitrations from being public panelist candidates.

- Evaluate improved mechanisms and processes through which claimants and respondents could reject, challenge or decline arbitration panel candidates.
- Revisit FINRA's ability to strike all non-public (industry) panel candidates or consider removing the non-public category all together (i.e., no distinction for past industry involvement and all panelists are considered public panelists).

The Study could additionally solicit feedback and evaluate the arbitration rules and procedures, including issues such as:

- Review of FINRA Arbitration Rule 12206 (time limits for claims) and its application.
- Limiting or eliminating punitive damages in arbitration awards.
- Production and admissibility of regulatory communications.
- Pleading or statement of claim requirements.