EREZ LAW
PROFESSIONAL LIMITED LIABILITY CORPORATION

One Downtown | 1 SE 3rd Ave. | Suite 1670 | Miami FL 33131
Phone: 305.728.3320 / 1.888.840.1571 | Fax: 786.842.7549

Jeffrey Erez, Esq.
Stefan Apotheker, Esq.
Michael Rapaport, Esq.

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Via Email: ***pubcom@finra.org***
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K. Street, NW
Washington, DC 20006

Re: **Comment On FINRA Regulatory Notice 26-06 – Modernizing FINRA Arbitration Rules, Guidance and Process**

Dear Ms. Mitchell:

This letter is submitted in response to FINRA's request for comments on the proposals set forth in FINRA Regulatory Notice 26-06. I am a securities arbitration attorney. For more than 20 years my law practice has been devoted to representing the victims of investment fraud in FINRA arbitration claims to obtain justice for securities fraud and other misconduct committed by FINRA member broker-dealers and their associated persons and registered representatives. The comments contained herein reflect the insights formed as a result of more than 20 years of experience in the FINRA arbitration forum. I implore FINRA to honor its stated mission of investor protection and reject the vast majority of proposals set forth in Regulatory Notice 26-06. Many of the proposals set forth in Regulatory Notice 26-06 contemplate changes designed solely and exclusively to benefit broker-dealers in FINRA arbitration proceedings, at the expense of public investors, particularly retail investors. The proposals contemplated in Regulatory Notice 26-06 betray FINRA's mission of investor protection and facilitate new pathways for the securities industry to escape accountability for harm caused by industry members.

Forum Selection/Customer Disputes (Requests for Comment A(i))

Proposals to differentiate procedural requirements or allow FINRA member firms to select alternative arbitration forums to FINRA based on whether a claim is "complex" or "large" or the claimant is an "institutional" or "retail" investor are fundamentally flawed and dangerous. The distinction between these categories is often artificial and controlled by the FINRA member firm itself. For example, retail customers are often advised by their financial advisor to invest in complex investment products and/or strategies. Similarly, retail investors are often advised by their financial advisor to establish corporate entities and/or trusts as investment vehicles, ostensibly for the purposes of estate planning and/or asset protection, or to allow them access to complex investment products.

Importantly, a retail investor forming a single-member LLC has no bearing on the customer's actual degree of experience and sophistication or their reliance on the financial advisor's investment advice. Customers of FINRA member firms are often unaware that this nominal change may strip them of critical regulatory protections. Permitting FINRA member firms to differentiate between customers, or allowing FINRA member firms to select alternative arbitration forums with fewer or no protections based on decisions made by the very FINRA member whose conduct is the subject of the claim, creates a perverse incentive for bad actors to exculpate themselves from misconduct. In other words, this proposal would significantly diminish investor protections while insulating FINRA member firms from accountability for misconduct.

Furthermore, FINRA should consider the critical distinction between pre-dispute and post-dispute variances. Pre-dispute variances inevitably lead to boilerplate contracts dictated by firms that favor the firm's interests, as customers lack the leverage or knowledge to negotiate these terms. Conversely, allowing parties to manage the administration of their case post-dispute, when the customer is more likely to be represented by counsel that is familiar with the process, poses less risk to the customer and allows for necessary customization. Allowing customers to unilaterally choose between arbitration and litigation post-dispute aligns with FINRA's obligation to protect investors. Allowing certain claims to be heard in alternative arbitration forums that have been hand-selected by the securities brokerage industry, does not increase fairness for the customer. On the contrary, this would only serve to shift the venue away from FINRA to one where the power imbalance between a FINRA member firm and their customer is even more pronounced in favor of the firm. The current system, where customers can access FINRA arbitration regardless of the claim's nature, provides a necessary baseline of protection that would be eroded by such exclusions.

Eligibility and Motions to Dismiss (Requests for Comment B(i))

The current practice of allowing eligibility motions to dismiss potentially forces investors back into court years after filing, restarting their litigation from scratch and creates significant inefficiency. This is particularly problematic for long-term, illiquid products like private placements, alternative investments like non-traded REITs, and annuities, where the true value of the investment may not be revealed for years due to sponsors' ability to set and artificially mask the investment's Net Asset Values (NAV). In these cases, the "event" triggering the claim may be the realization of a massive loss that occurs several years after the initial purchase, a nuance that a rigid time bar would fail to capture. Furthermore, many states do not apply statutes of limitations to arbitration, viewing them as equitable proceedings. FINRA's rules already empower arbitrators to interpret and apply the Code, and introducing statutory limitations would create confusion and inconsistency. Interpreted correctly, the current eligibility rule, which focuses on the "occurrence or event" within six years, is flexible enough to account for ongoing fraud, continuing representation, and the delayed discovery of harm inherent in complex financial products.

The eligibility rule should not be amended to create a strict statute of repose. Such a rule would incentivize negligent supervision and reward bad actors who conceal fraud for extended periods. Many claims involve ongoing misconduct, such as long-tailed Ponzi schemes or continuous fraudulent account statements, where the harm is not discovered until years later. The current rule recognizes that investors interact with advisors continuously and may not be aware of

harm due to the advisor's deception or the firm's failure to supervise. Tying the eligibility period strictly to the date of a securities transaction also ignores the reality that the claim often arises from subsequent fraudulent acts, such as the creation of fake statements, misstating an investment's value to conceal losses and/or other misrepresentations. The flexibility of the current rule allows arbitrators to analyze the unique facts and circumstances of each particular case, whereas a rigid statute of repose would potentially bar valid claims and undermine investor protection.

Furthermore, providing the industry with additional methods to dismiss cases would only serve to increase abusive motion practice and prevent customers from having their cases heard on the merits. FINRA's own guidance discourages pre-hearing dismissals. Instead of adding more hurdles for customers to have their claims heard, FINRA should clarify that pleading standards in arbitration do not require court-style detail and should require discovery to be completed before motions to dismiss can be filed. This would ensure that FINRA arbitrators have a complete record to evaluate eligibility motions, and would prevent firms from their current practice of filing motions to dismiss early in the process in order to stifle legitimate discovery and delay justice. I do not support the proposed changes to the timing or circumstances for prehearing motions to dismiss. The current framework, which discourages such motions prior to the conclusion of a party's case-in-chief, is essential for fairness to the investing public. Allowing earlier and/or broader dismissal powers would only further tilt the playing field in favor of FINRA member firms, and against public investors.

Arbitrator Qualifications, Classification, and Selection (Requests for Comment C & D)

I am opposed to FINRA's recent changes requiring a four-year college degree and five years of professional experience for arbitrators. These requirements arbitrarily disqualify a vast segment of the population – adults without a bachelor's degree. Further increasing minimum qualification requirements would artificially shrink the pool and increase reliance on repeat arbitrators. This move potentially creates an industry-tilted panel that is less representative of the investing public. FINRA arbitration exists as a substitute for the right to a jury trial. Therefore, the arbitrator pool should resemble a jury pool as closely as possible. Members of juries do not require specific subject matter expertise, nor do many judges. The new rules make becoming a part-time arbitrator more difficult than becoming a Series 7 licensed financial advisor, which requires no degree. The pool should be broadened to include anyone who has invested with a FINRA member and can complete the training, ensuring a true jury of peers.

FINRA is required to have rules that are "designed . . . in general, to protect investors and the public interest." 15 U.S.C. § 78o-3(b)(6). I am opposed to any amendments to the definition of "public arbitrator" that would dilute the independence criteria. The current disqualification criteria, such as the 20% professional time threshold and cooling-off periods, are essential guardrails. Individuals who spend a significant portion of their careers representing securities industry interests may develop a "defense" oriented worldview. Expanding the roster to include "industry-light" arbitrators would erode the legitimacy of the forum. The pool of FINRA arbitrators is already heavily skewed toward an older, professional demographic. FINRA should focus on recruiting truly neutral professionals rather than lowering standards.

Rule 12403(c)(1)(A), which allows parties to strike all non-public arbitrators, should not be amended. This rule was a landmark victory for investor protection, addressing the rampant systemic bias of a system that previously required a securities industry representative to be on every FINRA arbitration panel. Reverting this rule would undermine the neutrality of arbitration panels and contravene FINRA's goal of investor protection.

FINRA should amend its rules to allow all claimants collectively and all respondents collectively to share the same number of strikes. This would ensure that one side does not have an unfair advantage due to the number of separately represented parties. As long as the rule applies equally to both sides, it promotes impartiality.

Arbitrator Training (Requests for Comment E)

I support additional procedural training, such as refresher courses on ethics, hearing structure, and the role of the chairperson. Continuing education on FINRA rule changes and training to prevent late withdrawals would also be beneficial. However, this arbitrator training must remain focused on *procedure*, not substance. I am opposed to any training that creates a hierarchy of customer claims, implying some are more important than others. All cases, whether involving a small retirement nest egg or a large trading account, deserve equal respect and dignity. Any additional training should focus on managing complex multi-party disputes or extensive document production, not on substantive legal distinctions or investment products. Such Training on elements of laws or complex investment products undermines FINRA's neutrality and creates a dangerous risk of FINRA (intentionally or unintentionally) placing its "thumb on the scale" regarding legal interpretations. Substantive issues should be left to argument by the parties' advocates and testimony of expert witnesses.

Discovery (Requests for Comment F)

The Discovery Guide is currently slanted in favor of respondents and must be amended to reflect the reality of the 2026 securities industry. The Discovery Guide was an important step forward, and away from "adjudication by ambush", however it is now severely outdated and must be updated to reflect the new realities of the securities brokerage industry and litigation practice. Broker-dealers routinely abuse the process with boilerplate objections, particularly regarding exception reports (List 1, Item 13(b)) and commission runs (List 1, Item 20), often erroneously citing to the Gramm-Leach-Bliley Act and/or state financial privacy statutes as somehow "prohibiting" the firm from producing documents responsive to the Discovery Guide.

FINRA must enforce the Discovery Guide more strictly, clarifying that frivolous and/or legally unsupportable objections to presumptively discoverable Discovery Guide items constitutes sanctionable discovery abuse. The Discovery Guide should be updated to mandate the production of compliance manuals *in their entirety* and regulatory investigation documents (including FINRA 8210 requests and SEC Wells notices). The Discovery Guide should also be updated to mandate the production of all communications including text messages, emails and firm messaging platform communications that are relevant to the dispute and/or the investment products and/or strategy at issue. These documents are often internal firm documents that are essential to a full and fair evidentiary hearing on the merits, but are overwhelmingly the subject of discovery objections.

I am opposed to the contemplated proposal to create a new "discovery referee" or additional layer of bureaucracy. FINRA already has a robust code of arbitration procedure with eight (8) rules dedicated to discovery. The problem is not a lack of rules but a lack of enforcement. FINRA should focus on training arbitrators to enforce existing rules, discourage boilerplate objections to the Discovery Guide, and sanctioning repeat violators rather than creating new administrative roles that could introduce industry bias.

FINRA must resist imposing further limitations on discovery. Access to potentially relevant information is a right, not a mere desire. Broker-dealers are required by SEC rules to maintain records in a readily available format, and cost objections should require evidence of an actual unreasonable burden.

Finally, the Discovery Guide must be amended to require the production of insurance coverage information upon request. In all federal courts and nearly all states, liability insurance disclosure is mandatory. The lack of this disclosure in FINRA arbitration is fundamentally unfair, as it prevents investors from assessing the collectability of an award and planning their strategy. The proposed amendment should require the production of policy declarations, the full policy, and any declination letters.

Hearing Oversight and Efficiency (Requests for Comment G)

FINRA should not create a central contact point to provide interpretive guidance. Such a resource risks arbitrators relying on FINRA staff for legal interpretations, blurring the line between administration and adjudication. Instead, FINRA should improve the clarity of existing resources and enhance training on procedural and evidentiary issues.

No new case management requirements are needed. The priority should be enforcing existing timelines and rules. Firms frequently fail to comply with discovery obligations, and arbitrators are often reluctant to impose meaningful sanctions. Strengthening enforcement mechanisms is more effective than creating new deadlines. If procedural benchmarks (like the scheduling of an Initial Prehearing Conference or final hearing) are not met, FINRA staff should automatically check in with the parties and panel to offer administrative assistance. This removes the pressure on parties to request help and ensures timely resolution without compromising arbitrator independence.

FINRA should develop a mobile app for counsel, improve billing integration to issue invoices promptly, and update the DR Portal to display docket information more clearly (similar to PACER) including filtering portal filings. The portal should also include specific filing types for common motions.

Punitive Damages (Requests for Comment H)

H1. Should FINRA maintain the current framework that allows arbitrators to award punitive damages?

FINRA's contemplated changes to the current framework allowing arbitrators to award punitive damages constitute an attempt to manufacture a remedy for a problem that does not exist.

Punitive damages are an extraordinarily rare occurrence in FINRA arbitrations. According to FINRA's own published data, from 2021 to 2025, there were 10,393 arbitration cases closed in the FINRA forum involving customer disputes.[1] Of those 10,393 customer disputes, only 734 cases were closed by an arbitration award after a hearing on the merits, and just 313 cases included an award of *any* damages at all to customers.[2] According to FINRA, during the nearly 38 year period from March 1988 to December 2025, only 3 percent of all arbitration awards included an award of punitive damages.[3] This figure includes customer disputes and industry/ employment disputes arbitrated in the FINRA forum.

The premise that remedial efforts are required to address the miniscule probability of a customer being awarded punitive damages is an absurd overreaction to two recent high-profile cases involving two prominent FINRA member firms that were properly the subject of significant punitive damage awards. FINRA's own published data is clear that these two recent high-profile punitive damage awards are outliers, and that the probability of punitive damages being awarded in a FINRA arbitration proceeding remains extraordinarily low.

In fact, according to one of the firms that was the subject of the two (2) aforementioned punitive damages awards, during the 20 year period from 2005 to 2025, there have been 5,411 FINRA customer arbitration cases that resulted in an award of damages, and just 386 of such cases resulted in an award of punitive damages.[4] According to the firm, of the 386 FINRA arbitration awards that have resulted in an award of punitive damages during the 20 year period from 2005 to 2025, there were just 58 cases where the punitive damages award exceeded $1 million, and only ten (10) cases where the punitive damages exceeded $5 million (three of which were default awards against parties who did not appear at the evidentiary hearing.)[5] In other words, the issuance of punitive damages in FINRA arbitration proceedings remains an exceptionally rare occurrence and does not warrant any policy or rule changes on the part of FINRA.

According to FINRA, of the 1,391 FINRA arbitration cases involving customer disputes that closed by award from 2021 to 2025, customers were awarded damages in just 29 per cent of

[1] *See* FINRA Regulatory Notice 26-06, p. 6.
[2] *See* FINRA Regulatory Notice 26-06, p. 6.
[3] *See* FINRA Regulatory Notice 26-06, p. 28.
[4] *See* Declaration of Jeff Bindon. S.D. Fla. Case 1:25-cv-21176-DPG, Document 27-57.
[5] *See* Declaration of Jeff Bindon. S.D. Fla. Case 1:25-cv-21176-DPG, Document 27-57.

cases.[6] FINRA's reform efforts are better directed at leveling the playing field for investors by understanding and addressing the underlying root causes of why customers in FINRA arbitration claims prevail at a dramatically lower rate than plaintiffs in civil tort litigations in state and federal court.

Punitive damages serve an important and necessary purpose, namely to punish the wrongdoer and deter future wrongdoing.[7] It is deeply concerning that FINRA would even contemplate limiting or eliminating arbitrators' right to enter an award of punitive damages to punish FINRA member firms for conduct that the arbitrator has determined warrants such damages.

There are numerous safeguards already in place to ensure that punitive damages are awarded in only the most extreme and egregious of circumstances. For example, while the standards for awarding punitive damages vary from state to state[8], all states require that the party seeking punitive damages must meet significantly higher standards than the standards applicable for awarding compensatory damages.

For example, in order to obtain an award of punitive damages in most states, a party must prove that the conduct in question was "malicious or intentional."[9] In addition, most states require that parties must meet a heightened burden of proof for punitive damages. Specifically, the burden of proof for compensatory damages in FINRA arbitration proceedings is a "preponderance of the evidence" (*i.e.* more likely than not).[10] However, the standard of proof for punitive damages in most states is the heightened and more rigorous "clear and convincing evidence" standard.

In addition, many states also require heightened proof for the issuance of punitive damages against a corporation or employer. For example, many states require that in order to obtain punitive damages against an employer or corporation for the conduct of an employee or agent, the party seeking punitive damages must not only demonstrate by clear and convincing evidence that the employee or agent was guilty of intentional misconduct or gross negligence, but must also prove that the employer or a corporate officer, director or manager knowingly participated, condoned, ratified and/or consented to the employee's misconduct, had advance knowledge that the employee was unfit or engaged in gross negligence or acted with conscious disregard which contributed to the claimant's injury.[11]

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[6] *See* FINRA Regulatory Notice 26-06, p. 6.
[7] *See* FINRA Dispute Resolution Services Arbitrator's Guide (Mar. 2026. Ed.), p. 70;
[8] *Id.*
[9] A minority of states permit arbitrators to award punitive damages for reckless indifference to the rights of others or gross negligence. *See* FINRA Dispute Resolution Services Arbitrator's Guide (Mar. 2026. Ed.), p. 70.
[10] *See* FINRA Dispute Resolution Services Arbitrator's Guide (Mar. 2026. Ed.), p. 67.
[11] *See* Fla. Stat. §768.72(3); *See* also, Ca. Civil §3294(b); N.C. Stat. §1D-15; Ks. Stat. §60-3701(d); Ky. Stat. §411.184(3); and Minn. Stat. §549.20.

These significantly heightened requirements for punitive damages help to explain why punitive damages have been awarded in only the rarest of FINRA arbitration cases.

In addition, the Federal Arbitration Act (FAA) and the myriad of state specific arbitration statutes ensure that there are appropriate safeguards in place to address arbitration awards issued by corruption, fraud, undue means, evident partiality or arbitrator misconduct.

It is disturbing that FINRA has chosen to focus its remedial efforts on the extraordinarily remote chance that a customer could be awarded punitive damages, rather than making the FINRA arbitration forum more fair and equitable for investors who, according to FINRA's own published data, are denied relief in more than 7 out of 10 FINRA customer arbitration proceedings.[12]

H.2. Should FINRA permit parties to agree in pre-dispute arbitration agreements to preclude or limit punitive damages? What customer protection and fairness considerations should be part of evaluating this question?

FINRA should not permit pre-dispute arbitration agreements that preclude or limit punitive damages. Permitting pre-dispute arbitration agreements that limit an arbitrator's ability to award punitive damages will create a *Hobson's choice* whereby any investor seeking to open an account with any FINRA member firm will be forced to forfeit their right to seek punitive damages.

Pre-dispute arbitration agreements that preclude or limit punitive damages would create a perverse incentive for unscrupulous firms and associated persons to engage in a broad range of egregious and intentional misconduct, with the assurance that they can never be held accountable by FINRA arbitrators for punitive damages, no matter how malicious the misconduct is proven to have been.

H.3. Should FINRA impose a cap on punitive damages awards to address concerns about excessive awards in the absence of judicial safeguards? If so, how should FINRA structure such a limitation or cap? What customer protection and fairness considerations should be part of evaluating this issue?

FINRA should not impose any cap on punitive damages. Caps on punitive damages already exist under state and federal law. For example, many state arbitration statutes already specify that an arbitrator's ability to award punitive damages is subject to the same limitations and standards of proof that would be applicable in a court action.

FINRA should not create separate standards and limitations on the availability of punitive damages when such standards and limitations already exist under current state and federal law. Creating separate FINRA standards would be redundant and unnecessary.

[12] *See* FINRA Regulatory Notice 26-06, p. 6.

H.4. Are there procedural safeguards—such as bifurcated hearings for liability and damages, enhanced standards for awarding punitive damages, or mandatory explained decisions when punitive damages are awarded—that FINRA should consider in response to this issue? Are there other procedural safeguards FINRA should consider? What customer protection and fairness considerations should be part of evaluating this question?

FINRA should not consider imposing any additional procedural impediments to an arbitrator's authority to award punitive damages because, amongst other things: (i) the procedural safeguards currently in place are already more than adequate; and (ii) the imposition of additional requirements will make the FINRA arbitration process simultaneously more costly and less efficient, thus undermining FINRA's goal of providing "impartial dispute resolution that is less costly and faster than traditional litigation."

The existing procedural safeguards in place are already more than sufficient. State law already imposes significantly heightened requirements for an arbitrator to award of punitive damages. For example, state law already requires that in order to prevail on a claim for punitive damages in arbitration a party must prove that the conduct in question was "malicious or intentional", or in some states the party must prove gross negligence or a reckless indifference to the rights of others. In addition, most states require that parties must prove their claim for punitive damages by "clear and convincing evidence", which is more stringent than the "preponderance of the evidence" standard required to prevail on a claim for compensatory damages.

Similarly, many states already require some degree of explained decisions when punitive damages are awarded in arbitration. *See* Fla. Stat. §682.11(a) ("When an award of punitive damages is made in an arbitration proceeding, the arbitrator who renders the award must issue a written opinion setting forth the conduct which gave rise to the award and how the arbitrator applied the standards in s. 768.72 to such conduct."); *See* also, Mich. Stat. §691.1701(1) ("If an arbitrator awards punitive damages or other exemplary relief under subsection (1), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief."); Minn. Stat. §572B.21 (same); N.J. Stat. §2A:23B-21 (same); and N.C. Stat. §1-569.21 (same).

As such, "enhanced standards for awarding punitive damages" already exists under existing law. These existing requirements under state law are already more than sufficient.

I am vehemently opposed to FINRA's proposal to require bifurcated hearings for liability and damages, as this would significantly increase the costs and time associated with FINRA arbitration proceedings, and undermine the goal of FINRA arbitration providing an efficient and economical alternative to litigation.

H.5. For some types of claims in FINRA's arbitration forum, FINRA requires arbitrators to have additional qualifications to be eligible to serve on a panel considering such claims. Should FINRA require that arbitrators considering requests for punitive damages have additional experience and qualifications? If so, what would be appropriate additional experience and qualifications? What customer protection and fairness considerations should be part of evaluating this question?

FINRA should not require arbitrators considering requests for punitive damages to have additional experience and qualifications. It is patently absurd to suggest that a FINRA arbitrator is competent and qualified to dismiss a case without a hearing on the merits, or decide important issues such as liability, eligibility, compensatory damages, statutory claims and attorney's fees, but is somehow not competent or qualified to render a decision on punitive damages.

In addition this proposal is severely impractical. As noted above, punitive damages have been awarded in only the rarest of circumstances. Furthermore, it is a common occurrence that the evidentiary grounds for punitive damages may not be readily apparent at the time the claim is filed and are only uncovered during the discovery process, prompting parties to seek leave to amend to add a claim for punitive damages. Creating a separate set of qualifications required for arbitrators to serve on a panel considering punitive damages claims would create a disincentive for some arbitrators to grant parties leave to amend to add a claim for punitive damages. This proposal would also require some parties to needlessly go through the arbitrator selection process for a second time, months after the original panel was appointed.

Finally, FINRA already requires a separate and set of heightened qualifications required for an arbitrator to serve as a chairperson on a FINRA arbitration panel. The enhanced requirements for service as a chairperson already ensures that FINRA arbitration panels are guided by arbitrators with more robust training, education and/or experience. There is no need for additional experience or qualifications for arbitrators to resolve the issue of punitive damages.

H.6. Should FINRA develop an arbitration appeals process relating to awards of punitive damages? If so, what should such a process look like? For example, should both the amount of the award and the decision itself to award punitive damages be appealable? Should any party be able to appeal or only the party against whom punitive damages are assessed? Should arbitrators with specific experience and qualifications make up the appellate roster? If so, what would be appropriate additional experience and qualifications? What else should FINRA consider if it were to develop an arbitration appeals process relating to awards of punitive damages? Should FINRA consider an arbitration appeals process that is not limited only to a review of punitive damages awards (e.g., interim appeals of certain dispositive panel rulings)? What customer protection and fairness considerations should be part of evaluating these questions?

I am vehemently opposed to the imposition of an appeals process related to awards of punitive damages. The Federal Arbitration Act and the myriad of state arbitration statutes already provide adequate remedies for vacating arbitration awards issued as a result of corruption, fraud, undue means, evident partiality or arbitrator misconduct.

There is no justification for FINRA to single out arbitration awards that include punitive damages to be the subject of an appeals process, when no such process exists for any other type of arbitration award, including awards imposing sanctions or granting pre-hearing dismissals.

The imposition of an appeals process for awards of punitive damages would needlessly increase the costs and time associated with the FINRA arbitration process and undermine the goal of providing an efficient and economical alternative to litigation. Similarly, an appeals process would act as a disincentive for arbitrators to award punitive damages because it would expose arbitrators awarding punitive damages to the increased likelihood that their decision may be overturned.

Finally, FINRA member firms that wish to have their disputes subject to a traditional appeals process already have the right to waive their arbitration agreement and permit customers to pursue their claims in court. The imposition of an appeals process would unfairly render some claims subject to an appeals process, but only when the outcome is unfavorable to the FINRA member firm. Such a process would severely undermine the actual and perceived fairness of the FINRA arbitration process.

Arbitration Awards Online (AAO) (Requests for Comment J)

The AAO database is a critical resource for parties, attorneys, researchers, regulators, and the public. It allows investors to research arbitrator track records, identify patterns of misconduct, and level the information asymmetry between repeat-player firms and one-shot investors.

FINRA should not amend its rules to permit the removal or redaction of awards from AAO. Transparency is essential for investor protection and regulatory oversight. The expungement

process is deeply flawed, with high approval rates and low opposition, and removing awards from AAO would create a "memory hole" that hides patterns of misconduct. Entire awards should remain public.

FINRA should enhance AAO by converting awards into structured, searchable data, integrating outcome analytics, linking awards to court actions and BrokerCheck profiles, and improving full-text search capabilities.

Unpaid Awards (Requests for Comment K)

FINRA has failed to make any meaningful progress on the longstanding and serious problem of unpaid arbitration award. As of 2024, approximately 25% of investor awards remain unpaid, with roughly 37 cents on the dollar uncollected. These figures reflect a persistent structural deficiency rather than an isolated issue. The most effective solution would be a national investor recovery pool administered by FINRA, funded by member firms which is clearly feasible since FINRA has separately refunded $50 million and $100 million to the industry in the last ten months alone. Insurance mandates have been shown in states like Oregon to not reduce access to advisory services and should also be considered. FINRA should also pursue legislative changes to prevent bankruptcy discharge of unpaid awards and strengthen disclosure requirements.

The moral hazard argument against insurance or a recovery pool is unfounded. Bad actors are not incentivized to commit fraud by the existence of a safety net, as intentional misconduct is typically excluded from coverage and the pool would retain the right to pursue the bad actor. The unpaid award problem must be addressed regardless of the forum or the title of the financial professional.

Conclusion

I encourage FINRA to ensure that any considered changes to their rules would prioritize the strengthening of investor protection and integrity of the markets. FINRA should not make changes to placate its board or industry members as the expense of its mandated goal of investor protection. The core principles of fairness, transparency, and acting in the customer's best interest must remain intact and be upheld.

Thank you for your attention to this matter.

Sincerely,

Stefan Apotheker, Esq.