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May 1, 2026

Via Electronic Submission

Marcia E. Asquith
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Washington, D.C. 20006-1500

Re: FINRA Request for Comment on Modernizing FINRA Arbitration Rules, Guidance, and Processes

Dear Ms. Asquith:

Sullivan & Cromwell LLP ("S&C"), in the interest of certain FINRA members, appreciates the opportunity to comment on FINRA's Regulatory Notice on modernizing FINRA arbitration rules, guidance, and processes. We applaud this step forward by FINRA and strongly support FINRA's objective of providing a "fair and efficient alternative to litigation."[1] For the vast majority of cases, we believe that FINRA arbitration successfully provides such a forum for resolving typical disputes involving low- and medium-value claims.[2]

Unfortunately, making the forum cost-effective and available to most parties comes with compromises, such as streamlined procedures (including the unavailability of most dispositive motions) and the absence of a realistic avenue for reviewing awards. These compromises are especially problematic for high-value disputes as well as disputes involving sophisticated investors. Two targeted rule

1 FINRA, Regulatory Notice 26-06, *FINRA Requests Comment on Modernizing FINRA Arbitration Rules, Guidance and Processes*, at 1 (Mar. 2, 2026), https://www.finra.org/sites/default/files/2026-03/Regulatory-Notice-26-06.pdf [hereinafter Regulatory Notice 26-06].

2 *Id.*

amendments would ameliorate these shortcomings and generally leave the FINRA arbitration forum intact for the cases for which it is designed.[3]

- *First*, FINRA should amend Rules 12200 and 13200 expressly to allow enforcement of forum selection clauses, such as pre-dispute arbitration agreements or forum selection agreements ("pre-dispute forum agreements" or "PDFAs"), in disputes involving large claims or among sophisticated parties. To draw a bright line, we propose that forum selection clauses be enforceable for any claim (i) seeking damages in excess of $10 million (a "high-value claim") or (ii) arising between sophisticated counterparties, as defined by reference to "institutional investor" and "institutional account" in Rules 2210(a)(4) and 4512(c), which include institutions and "any other person," including natural persons and trusts, "with total assets of at least $50 million";[4]

- *Second*, FINRA should amend Rules 12904, 13904, and 2268(d) to clarify that punitive damages are not an available remedy in FINRA arbitration, or at minimum, to permit parties to contract *ex ante* to preclude arbitrators from awarding punitive damages.

These two targeted rule amendments will enable FINRA arbitration to continue to fulfill its fundamental purpose, while letting sophisticated parties and parties subject to high-value claims select, *ex ante*, a dispute-resolution forum better suited for those claims. This will allow FINRA to focus its limited resources on typical disputes well suited for resolution by FINRA arbitrators. In **Appendix A**, we provide suggested amendments to Rules 2268(d), 12200, 13200, 12904, and 13904.

I. PDFAs

PDFAs are agreements between member firms and their customers to arbitrate, or to litigate in a specific jurisdiction, disputes arising from the services provided to such customers, often executed upon opening an account. In approximately

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[3] While this letter focuses on two reforms that we believe are necessary to return FINRA arbitration to its original purpose, we believe that other reforms would improve the forum for disputes where FINRA arbitration is the only forum. *See* SIFMA, *Recommendations for FINRA Arbitration* (July 11, 2025), https://www.sifma.org/wp-content/uploads/2025/07/SIFMA-Letter-to-FINRA-re-Arbitration-2025.07.11.pdf.

[4] FINRA Rule 2210(a)(4); *id.* 4512(c).

97% of cases where an award was issued in the FINRA arbitral forum, the claims at issue were not high-value claims.[5]

Two background principles should be uncontroversial. *First*, because high-value cases pose "special and often unique problems . . . which require greater procedural flexibility," it is important to preserve the ability for parties to a large and complex claim to "customize the procedures under which [such a] claim will be heard."[6] FINRA's arbitration code does not provide this flexibility. *Second*, sophisticated parties can "fend for themselves"[7] and possess the sophistication necessary to determine for themselves where to litigate any dispute that may arise among themselves.[8]

In contravention of these background principles, current FINRA rules and guidance take a one-size-fits-all approach. FINRA does not permit any limit to a customer's ability to request FINRA arbitration for any dispute, and also mandates that disputes between members must take place in FINRA arbitration. Specifically, PDFAs between member firms and their customers are governed by FINRA Rule 12200, which states: "Parties must arbitrate a dispute under the Code if . . . (1) Required by a written agreement, or (2) Requested by the customer." FINRA Rule 13200 similarly provides that "[e]xcept as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated

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5 *See* **Appendix B**.

6 David S. Ruder et al., Securities Arbitration Reform, Report of the Arbitration Policy Task Force 68 (Jan. 1996) [hereinafter 1996 Report].

7 Regulation D Revisions; Exemption for Certain Employee Benefit Plans, 52 Fed. Reg. 3015, 3017 (proposed Jan. 30, 1987).

8 FINRA Rule 2111(b) (providing that a broker-dealer's customer-specific suitability obligation is fulfilled for an institutional account if, among other things, the firm reasonably believes the customer is capable of independently evaluating investment risks and the customer affirmatively indicates that it is exercising independent judgment); *see also M/S Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972) ("The choice of that forum was made in an arm's-length negotiation by experienced and sophisticated businessmen, and absent some compelling and countervailing reason it should be honored by the parties and enforced by the courts."); *M.A. Mortenson Co.* v. *Saunders Concrete Co.*, 676 F.3d 1153, 1158 (8th Cir. 2012) ("Saunders offers no authority indicating that a forum selection clause agreed to by two sophisticated business entities could be substantively unconscionable.").

person and is between or among: Members; Members and Associated Persons; or Associated Persons."

FINRA has interpreted FINRA Rule 12200 to provide customers with an unfettered option to opt into FINRA arbitration at any time even after a dispute arises, regardless of any prior agreement selecting an alternative forum, stating that "customers have a right to request arbitration at FINRA's arbitration forum *at any time and do not forfeit that right under FINRA rules by signing any agreement with a forum selection provision specifying another dispute resolution process or an arbitration venue other than the FINRA arbitration forum*."[9]

FINRA's position is at odds with two federal circuit courts that have upheld the validity of members and their customers contracting pre-dispute to resolve their disputes in a non-FINRA forum (including the courts).[10] Conversely, no circuit court has endorsed FINRA's position that members' customers do not waive their right to

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9 FINRA, Regulatory Notice 16-25, *Forum Selection Provisions Involving Customers, Associated Persons and Member Firms*, at 1 (July 22, 2016), https://www.finra.org/sites/default/files/notice_other_file_ref/Regulatory-Notice-16-25.pdf [hereinafter Regulatory Notice 16-25] (emphasis added).

10 *Goldman, Sachs & Co.* v. *Golden Empire Schs. Fin. Auth.*, 764 F.3d 210, 215 (2d Cir. 2014) (holding that "a forum selection clause requiring 'all actions and proceedings' to be brought in federal court supersedes an earlier agreement to arbitrate" embodied in FINRA Rule 12200); *Goldman, Sachs & Co.* v. *City of Reno*, 747 F.3d 733, 747 (9th Cir. 2014) ("Although we agree with the district court that Reno qualifies as Goldman's customer under FINRA Rule 12200, we hold that Reno disclaimed its right to FINRA arbitration by agreeing to the forum selection clauses in the 2005 and 2006 Broker–Dealer Agreements."). *But see Reading Health Sys.* v. *Bear Stearns & Co.*, 900 F.3d 87, 102–04 & n.83 (3d Cir. 2018) (stating that the question of whether a forum-selection clause superseded a customer's right to arbitrate under FINRA Rule 12200 is one of waiver and ultimately leaving open the question of "whether an explicit waiver of the right to arbitrate would be invalid and unenforceable under Section 29(a) of the Exchange Act"); *UBS Fin. Servs., Inc.* v. *Carilion Clinic*, 706 F.3d 319, 328–30 (4th Cir. 2013) (acknowledging that "the obligation to arbitrate under FINRA Rule 12200 can be superseded and displaced by a more specific agreement between the parties" but ultimately concluding that the forum-selection clause was not such an agreement).

demand FINRA arbitration "by signing *any* agreement with a forum selection provision" providing for an alternative to FINRA dispute resolution.[11]

We propose that FINRA amend Rules 12200 and 13200 to permit enforcement of binding forum selection clauses in members' contracts with customers, other members, and institution-affiliated parties that provide for a forum of their choosing for high-value claims and claims between sophisticated parties. This would enable parties to choose a forum—either a court or another arbitral forum—that provides the procedural flexibility and safeguards necessary for large or complex claims.[12]

We propose defining "high-value claims" as a threshold beyond which PDFAs will be enforceable. For example, FINRA could define "high-value claims" as any claim seeking $10 million or more in damages, which we believe would capture a *de minimis* number of disputes.

To address disputes between sophisticated parties, we propose that FINRA draw upon its existing definitions of institutional investor and institutional account to identify "sophisticated counterparties." Specifically, FINRA can leverage the definitions of "institutional investor" and "institutional account" in Rules 2210(a)(4) and 4512(c),

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[11] Regulatory Notice 16-25, *supra* note 9, at 1 (emphasis added). An evenly divided circuit split (2-2) has emerged among the federal courts of appeals over what types of contractual forum-selection clauses supersede a customer's right to compel mandatory FINRA arbitration under FINRA Rule 12200. *See supra* note 10. The Second and Ninth Circuits have held that a broadly worded, mandatory forum-selection clause requiring "all actions and proceedings" to be brought in a specified court is sufficient, on its face, to override FINRA's arbitration mandate even without any explicit mention of arbitration. *See Golden Empire*, 764 F.3d at 215; *Reno*, 747 F.3d at 746–47. The Third and Fourth Circuits take the opposite view, holding that a forum-selection clause must specifically reference arbitration—or at least contain language that clearly signals an intent to waive the right to FINRA arbitration—before it can supersede the customer's regulatory right under Rule 12200. *See Reading Health*, 900 F.3d at 102–04; *UBS Fin. Servs.*, 706 F.3d at 328–30. That said, no circuit court has gone so far as to hold that an explicit waiver of a customer's right to FINRA arbitration is *per se* invalid. *See, e.g.*, *Reading Health*, 900 F.3d at 104 n.83 ("[W]e need not address whether an explicit waiver of the right to arbitrate would be invalid and unenforceable under Section 29(a) of the Exchange Act, as *amicus* and Reading argue.").

[12] 1996 Report, *supra* note 6, at 68.

which include both institutions and other persons (including natural persons and trusts) with total assets of at least $50 million.

The definitions of institutional investor and institutional account are tied to sophistication because these rules require a FINRA member to have a reasonable basis to believe that the institutional customer is "capable of evaluating investment risks independently" and that the institutional customer "affirmatively indicates that it is exercising independent judgment."[13] In addition to investment sophistication, FINRA has acknowledged in the past that such institutional parties have the resources to be "able to hire advisers," including legal advisers.[14]

FINRA's $50 million threshold is an order of magnitude higher than the monetary requirements for accredited investor standards ($1 million) and for the qualified purchaser standard ($5 million).[15] This high threshold provides additional comfort that unsophisticated parties will not unwittingly select a non-FINRA dispute-resolution forum.

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13 *See* FINRA Rule 2111(b) (providing an institutional-customer exemption); *see also id.* 4512(c) (defining "institutional account" to include "any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million").

14 Sec. & Exch. Comm'n, Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public) to Permit Projections of Performance of Investment Strategies or Single Securities in Institutional Communications, Release No. 34-98977, at 36–37 (Nov. 17, 2023), https://www.sec.gov/files/rules/sro/finra/2023/34-98977.pdf ("FINRA also believes that institutional investors, as defined in FINRA Rule 2210(a)(4), and QP private placement investors often either have the investment sophistication and experience, or *are able to hire advisers with investment acumen, necessary to avoid the potential harm* that may occur when single security performance projections or targeted returns are presented in retail communications." (emphasis added)).

15 17 C.F.R. § 230.501(a)(5) (defining "accredited investor" to include natural persons whose individual net worth, or joint net worth with a spouse or spousal equivalent, subject to certain exclusions, exceeds $1 million); 15 U.S.C. § 80a-2(a)(51) (defining "qualified purchaser" by reference to substantial investment holdings, including at least $5 million in investments for a natural person). The SEC has recognized both foregoing concepts as measures of investor sophistication.

Using dollar thresholds makes sense because they are reasonable, widely used administrative tools. For example, Congress uses dollar thresholds to define the scope of federal jurisdiction. *See* 28 U.S.C. § 1332(b) & (d) (setting $75,000 and $5 million thresholds for diversity jurisdiction and certain class actions). FINRA itself routinely uses monetary thresholds to allocate procedures and expressly provides different treatment for claims based on complexity or value. *See* FINRA Rule 12401(a)–(c) (providing that claims of $50,000 or less are subject to simplified procedures and heard by one arbitrator; that claims between $50,000 and $100,000 are generally heard by one arbitrator; and that claims exceeding $100,000 are heard by three arbitrators).

Further, dollar thresholds allow for the proper balancing between "fair, expeditious, and cost-effective dispute resolution services"[16] for typical claims that may not be economically viable outside FINRA arbitration and the procedural protections necessary for large claims. For example, FINRA arbitration relies on far more streamlined procedures than those employed by courts and some other arbitral forums.[17] Likewise, other arbitral forums are more amenable to motion practice than is FINRA.[18]

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[16] FINRA, *FINRA Dispute Resolution Services Party's Reference Guide* 4 (Mar. 2026), https://www.finra.org/sites/default/files/Partys-Reference-Guide.pdf.

[17] Discovery in FINRA arbitration is typically quite limited. *See, e.g.*, FINRA Rule 12506(a) (providing that FINRA's document production lists identify documents "presumed to be discoverable" in customer arbitrations); *id.* 13506(a) (stating that "[r]equests for information are generally limited to identification of individuals, entities, and time periods related to the dispute" and that "[s]tandard interrogatories are generally not permitted in arbitration"); FINRA, *FINRA Dispute Resolution Services Arbitrator's Guide* 31 (Mar. 2026), https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf (stating that "[d]epositions are strongly discouraged in arbitration" and permitted only in "very limited circumstances"). In addition, "the legal rules of what evidence may or may not be presented in a hearing do not strictly apply in arbitration." FINRA, *What to Expect: FINRA's Dispute Resolution Process* 2, https://www.finra.org/sites/default/files/Education/p117486.pdf. By contrast, JAMS authorizes each party to "take one deposition of an opposing Party or of one individual under the control of the opposing Party." *JAMS Comprehensive Arbitration Rules & Procedures* Rule 17(b) (Jun. 1, 2021), https://www.jamsadr.com/rules-comprehensive-arbitration [hereinafter JAMS Rules].

[18] *Compare, e.g.*, *AAA Commercial Arbitration Rules and Mediation Procedures* R-34(a) (Sep. 1, 2022),

Other forums allow the parties to modify procedures.[19] Further, while FINRA arbitrators receive modest compensation and are appointed following a random process, other forums allow the parties to agree upon the qualifications of arbitrators and the manner in which they will be appointed.[20] Whereas FINRA's streamlined and relatively fixed rules promote expeditious and cost-effective resolution of small- to medium-sized cases, the parties to larger or more complex disputes benefit, in addressing the "special and often unique problems" high-value cases pose, from the flexibility and customizability of the procedures of alternative forums.[21]

Our proposal does not run afoul of FINRA's concern that allowing PDFAs to waive FINRA customers' right to FINRA arbitration would "deny investors the

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https://www.adr.org/media/qielmf0g/2025_commercialrules_web.pdf [hereinafter AAA Rules] ("The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines the moving party has shown that the motion is likely to succeed and to dispose of or narrow the issues in the case, *and* JAMS Rules, *supra* note 17, at Rule 18 (same), *with* FINRA Rule 12504(a) (discouraging motions to dismiss before the conclusion of a party's case in chief and granting them only on specified grounds).

19 *Compare, e.g.*, AAA Rules, *supra* note 18, at R-1(a) (allowing parties to vary, "by written agreement, . . . the procedures set forth in these Rules" before appointment of arbitrators), *and* JAMS Rules, *supra* note 17, at Rule 2(a) (allowing parties to "agree on any procedures . . . that are consistent with the applicable law and JAMS policies"), *with* FINRA Rule 12105(a) (requiring, with limited exceptions, "the written agreement of all named parties" "if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel").

20 *Compare* FINRA Rule 12214(a)(1)–(3) (providing arbitrators honoraria of $300 per hearing session, plus specified additional amounts for chairpersons), *and id.* 12400(a) ("FINRA uses a list selection algorithm that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators for the selected hearing location for each proceeding."), *with* AAA Rules, *supra* note 18 at R-13 & 14(a) (AAA generates list of arbitrators if "agreement of the parties" does not "specif[y] a method of appointing an arbitrator").

21 1996 Report, *supra* note 6, at 68. FINRA itself acknowledges that claim size bears on the amount of process appropriate to the case and that higher value claims may require more procedure. *See* FINRA Rule 12800(a) & (c) (establishing a simplified, papers-based procedure by default for customer arbitrations involving $50,000 or less unless the customer requests a hearing).

benefits of FINRA's arbitration program, which may, as a practical matter, foreclose customers from asserting their claims, particularly small claims."[22] Rules 12200 and 13200 would still apply to the vast majority of disputes, including the small- to medium-value claims for which FINRA arbitration is designed and about which FINRA is concerned.[23] Our proposal merely enhances choice with respect to high-value claims and claims involving sophisticated investors, which can economically be brought in a variety of forums. This would allow FINRA to devote more of its limited resources to customers asserting small to medium claims. This proposal also strikes a balance between protecting investors and preserving market integrity, while allowing members and customers to select a forum that is better designed to handle high-value or more complex matters.

II. Punitive Damages

FINRA Rules 12904 and 13904 do not expressly address whether arbitrators may award punitive damages but merely state that arbitral awards must contain "[t]he damages and other relief awarded."[24] Further, Rule 2268(d) forbids any customer predispute arbitration agreement from including any condition that "limits or contradicts the rules of any [SRO]," "limits the ability of a party to file any claim in arbitration," or "limits the ability of arbitrators to make any award."[25] Tying these rules together, FINRA has taken the position that PDFAs cannot limit the ability of arbitrators to award punitive damages.[26] We propose that FINRA amend Rules 2268(d), 12904, and 13904 to either clarify that punitive damages are not an available remedy in FINRA arbitration, or at minimum permit parties to contract *ex ante* in their PDFAs to preclude arbitrators or courts from awarding punitive damages.

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22 Regulatory Notice 16-25, *supra* note 9, at 4.

23 *See* **Appendix B** (showing that in approximately 97% of cases where an award was issued in the FINRA arbitral forum, the claims at issue were not high-value claims).

24 FINRA Rule 12904(e)(6); *id.* 13904(e)(6).

25 *Id.* 2268(d).

26 FINRA, Regulatory Notice 21-16, *Predispute Arbitration Agreements in Customer Agreements*, at 4 n.16 (Apr. 21, 2021), https://www.finra.org/sites/default/files/2021-04/Regulatory-Notice-21-16.pdf.

Punitive damages are a special type of damages awarded to punish and to deter wrongdoing.[27] The Constitution requires that punitive damages awards be reasonable, and grossly excessive punitive damages awards by judges and juries violate due process.[28] In addition, "[t]he real problem . . . is the stark unpredictability of punitive awards," because "outlier cases subject defendants to punitive damages that dwarf the corresponding compensatories."[29] Here too, punitive damages awards in FINRA arbitration can produce similarly arbitrary and disproportionate results.

Additionally, FINRA arbitrators are not well suited to award damages intended to punish and deter. Members are subject to multiple overlapping enforcement regimes, including those administered by FINRA, the SEC, and the states. It is the responsibility of these experienced regulators and authorities to investigate, punish wrongdoing, and deter misconduct. Unlike the regulators overseeing the securities industry, FINRA arbitrators "are not FINRA employees but work on a case-by-case basis as independent contractors" and come from "different professions and backgrounds."[30] Further, they often do not have any experience or familiarity with the securities laws and regulations.[31] Moreover, FINRA arbitrators are charged with resolving specific, one-off

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27 *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 416 (2003) (explaining that punitive damages "are aimed at deterrence and retribution").

28 *Id.* at 425 (noting that a punitive damages award equaling a "substantial" compensatory award "can reach the outermost limit of the due process guarantee"); *see also, e.g.*, *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 568 (1996) (holding that grossly excessive punitive damages awards violate due process). However, courts have held that FINRA arbitrators' punitive awards are not restrained by the Constitution.

29 *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 499–500 (2008); *see id.* at 513 (capping punitive damages at 1x compensatory damages in maritime cases).

30 FINRA, *FINRA's Arbitration Process*, https://www.finra.org/arbitration-mediation/about/arbitration-process (last visited Apr. 30, 2026).

31 Under FINRA's customer code, a three-arbitrator panel generally comprises two public arbitrators and one non-public arbitrator, and the chair must be a public arbitrator. FINRA Rule 12403(a)(1) & (e)(1) (providing that, in customer cases with three arbitrators, FINRA generates separate public-arbitrator and public-chairperson lists, resulting in a majority-public panel and a public arbitrator as chairperson). Public arbitrators, by definition, may not be persons with certain current or past industry affiliations. *See id.* 12100(aa) (defining "public arbitrator" to exclude, among others, persons associated with broker-dealers,

disputes.[32] The role of these independent contractors cannot be to police the securities industry using punitive damages awards.[33]

Currently, the award of punitive damages in FINRA arbitration lacks key procedural safeguards. For example, the only avenue for challenging punitive damages awards issued in FINRA arbitration is to file a timely motion in a court of competent jurisdiction to vacate, modify or correct the award.[34] The grounds for vacatur, modification, or correction of an arbitral award are very narrow.[35] In practice, this results in the failure of most challenges to arbitral awards, including those with large punitive damages awards.

From a risk-management perspective, our proposed amendments to Rules 12904, 13904, and 2268(d) would allow members to better manage legal risk. Punitive damages, which may be substantial or effectively multiplicative, could pose an existential threat to smaller member firms. One large punitive damages award could cause a smaller firm to exit the market, which would limit investor choice and raise costs, and cause other firms to reevaluate their legal risk vis-à-vis certain products and services. Other arbitral forums and certain jurisdictions better allow contracting parties to manage this risk by enforcing agreements before a dispute arises, providing that punitive damages are unavailable.[36]

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investment advisers, mutual funds, hedge funds, and certain other financial-industry entities, as well as certain professionals who have devoted significant time to such entities).

32 1996 Report, *supra* note 6, at 113 ("[T]he primary purpose of [FINRA] arbitration is to resolve disputes between member firms and their customers . . . .").

33 Note that FINRA rules already appropriately empower arbitrators to refer conduct "likely to harm investors" or that the arbitrator believes violated the securities laws or FINRA rules to FINRA for enforcement investigation. *See* FINRA Rule 12104(b) & (e); *id.* 13104(b) & (e).

34 9 U.S.C. § 9.

35 *Id.* §10(a). Such grounds include, among other things, corruption, fraud, undue means, and arbitrator misconduct. *See also id.* § 11 (establishing the grounds under which an award may be modified or corrected).

36 *See, e.g.*, AAA Rules, *supra* note 18, at R-49(a) (allowing arbitrators to "grant any remedy or relief that the arbitrator deems just and equitable *and within the scope of the agreement of the parties*" (emphasis added)); JAMS, *Alternative*

III. Conclusion

S&C commends FINRA for its willingness to engage with members in pursuit of its goal to "ensure that customers, members and their associated persons are treated fairly in an efficient and transparent arbitration forum."[37] We believe that these targeted reforms that (i) permit binding forum selection clauses in PDFAs for sophisticated parties and high-value claims and (ii) remove the ability of arbitrators to award punitive damages or permit parties to contract out of punitive damages would go a long way toward addressing the key shortcomings in FINRA arbitration identified in this letter.

Sincerely,

/s/ *Steven R. Peikin*
Steven R. Peikin

Dispute Resolution (ADR) Clauses, https://www.jamsadr.com/clauses (stating that if parties "wish to preclude the arbitrator(s) from awarding punitive damages, they should include specific language to that effect" and providing model language that the arbitrators "are not empowered to award punitive or exemplary damages, except where permitted by statute" but also noting that Article 30.2 of the JAMS International Arbitration Rules and Procedures already forbids awarding punitive damages "unless the parties agree otherwise . . . [or] unless a statute requires that compensatory damages be increased in a specified manner"); *Rhodes* v. *Geeks on Call Holdings, Inc.*, 2009 WL 10688337, at *5 (E.D. Va. Feb. 6, 2009) ("This Court has previously recognized that a contractual waiver of punitive damages is enforceable under Virginia law.").

37 Regulatory Notice 26-06, *supra* note 1, at 1.

Appendix A

This appendix provides our specific proposed rule changes.

Rule 2268(d). Requirements When Using Predispute Arbitration Agreements for Customer Accounts

Except to the extent permitted by Rules 12200, 12904, 13200 and 13904, no predispute arbitration agreement shall include any condition that:

(1) limits or contradicts the rules of any self-regulatory organization;

(2) limits the ability of a party to file any claim in arbitration;

(3) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(4) limits the ability of arbitrators to make any award.

Rule 12200. Arbitration Under an Arbitration Agreement or the Rules of FINRA

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:

  (1) Required by a written agreement; or
  (2) Requested by the customer **for: (a) claims that seek less than $10,000,000 in damages and do not involve institutional accounts (as defined in FINRA Rule 4512(c)); or (b) institutional investors (as defined in FINRA Rule 2210(a)(4)).**

- The dispute is between a customer and a member or associated person of a member; and

- The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

Rule 13200. Required Arbitration

(a) Generally

Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among:

- Members **for: (a) claims that seek less than $10,000,000 in damages and do not involve institutional accounts (as defined in FINRA Rule 4512(c)); or (b) institutional investors (as defined in FINRA Rule 2210(a)(4))**;
- Members and Associated Persons; or
- Associated Persons.

Alternative 1

Rule 12904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction**; *provided, however*, that no award shall include punitive damages.**

Rule 13904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction**; *provided, however*, that no award shall include punitive damages.**

Alternative 2

Rule 12904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction**; *provided, however*, that a written agreement can prohibit the award of punitive damages.**

Rule 13904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction**; *provided, however*, that a written agreement can prohibit the award of punitive damages.**

Appendix B

Compensatory Damages Requested FINRA Customer Cases - 2015 through 9/10/2025						
		Compensatory Requested Buckets				
Year	*# of Awards*	*Less than $1M*	*$1M–$5M*	*$5M–$10M*	*Greater than $10M*	*Unspecified*
2015	636	477 / 75%	97 / 15%	9 / 1%	17 / 3%	36 / 6%
2016	528	391 / 74%	67 / 13%	17 / 3%	20 / 4%	33 / 6%
2017	504	390 / 77%	56 / 11%	9 / 2%	11 / 2%	38 / 8%
2018	501	370 / 74%	61 / 12%	16 / 3%	13 / 3%	41 / 8%
2019	451	304 / 67%	65 / 14%	21 / 5%	13 / 3%	48 / 11%
2020	284	216 / 76%	31 / 11%	7 / 2%	2 / 1%	28 / 10%
2021	450	313 / 70%	65 / 14%	5 / 1%	13 / 3%	54 / 12%
2022	455	309 / 68%	65 / 14%	19 / 4%	15 / 3%	47 / 10%
2023	369	254 / 69%	50 / 14%	9 / 2%	11 / 3%	45 / 12%
2024	326	218 / 67%	41 / 13%	16 / 5%	13 / 4%	38 / 12%
2025 *	206	148 / 72%	26 / 13%	7 / 3%	8 / 4%	17 / 8%
Totals:	4,710	3,390 / 72%	624 / 13%	135 / 3%	136 / 3%	425 / 9%

Source: FINRA, Arbitration Awards Online, https://www.finra.org/arbitration-mediation/arbitration-awards (last visited Oct. 17, 2025).

*Note: Cases dismissed by the Claimant(s) were excluded.