Regulatory Notice 26-06

Arbitration

FINRA Requests Comment on Modernizing FINRA Arbitration Rules, Guidance and Processes

Published Date: March 2, 2026

Comment Period Expires: May 1, 2026

Summary

Arbitration is an important means for resolving disputes involving customers, FINRA member firms and their associated persons. FINRA's Dispute Resolution Services (DRS) arbitration forum provides a fair and efficient alternative to litigation, promoting investor protection and market integrity.

As a self-regulatory organization (SRO), FINRA is committed to continuous improvement that draws on deep engagement with its members, the investing public and other interested parties. As part of this commitment, FINRA is reviewing its rules, guidance and processes to modernize requirements, facilitate innovation and eliminate unnecessary burdens.[1] To help inform the direction of its review, FINRA issued a general request for comment followed by two additional requests focused on capital formation and the modern workplace.[2] In response to these requests, several commenters raised concerns relating to FINRA's arbitration forum. As a result of the comments, as well as engagement outside of the comment process, FINRA has identified arbitration as an area of focus for its review.

Over the years, FINRA has frequently made changes to its rules, guidance and processes to help ensure that customers, members and their associated persons are treated fairly in an efficient and transparent arbitration forum. In addition, it has regularly sought input on challenging securities arbitration issues, including through issuing several discussion papers, and made changes in response to that input. FINRA has also enhanced its arbitration forum in response to recommendations from task forces representing a wide range of perspectives, which proposed approaches to enhance the transparency, impartiality and efficiency of FINRA's arbitration forum for all participants.

March 2, 2026

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

Key Topics

- Arbitration
- Arbitrator List Selection Process
- Codes of Arbitration Procedure
- Discovery
- Dispute Resolution

Referenced Rules & Notices

- Dodd-Frank Act Section 921
- FINRA Rule 12000 Series
- FINRA Rule 13000 Series
- FINRA Rules 1014, 2080, 2263, 2268, 9554
- Notices to Members 93-63, 94-54, 95-16, 95-85, 99-09, 99-54, 99-90, 00-55, 01-03, 05-09, 05-10, 07-07
- Regulatory Notices 09-07, 09-16, 10-39, 11-05, 11-17, 13-30, 13-40, 14-29, 16-25, 16-44, 17-02, 17-03, 18-22, 18-33, 20-11, 20-15, 21-04, 21-09, 21-16, 21-34, 23-12, 25-04, 25-06, 25-07, 25-16, 25-18
- Securities Exchange Act of 1934

This *Notice* requests comment on key areas of concern raised by commenters and others relating to FINRA's arbitration forum. The responses to this *Notice* will help FINRA consider how to further revise its arbitration rules, guidance and processes.

Questions concerning this *Notice* should be directed to:

- Victoria Crane, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104 or by email; or
- Carissa Laughlin, Assistant General Counsel, OGC, at (212) 858-4115 or by email.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by May 1, 2026.

Comments must be submitted through one of the following methods:

- online using FINRA's comment form for this *Notice*;
- emailing comments; or
- mailing comments in hard copy to:

  Jennifer Piorko Mitchell
  Office of the Corporate Secretary
  FINRA
  1700 K Street, NW
  Washington, DC 20006

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Note: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[3]

I. Background

A. Introduction

As part of the FINRA Forward rule modernization initiative, FINRA initially published three requests for comment (the rule modernization *Notices*).[4] Of the 127 comments received in response to the rule modernization *Notices*, 13 included arbitration-related concerns or recommendations.[5]

Most of these arbitration-related concerns and recommendations commenters raised relate to the arbitration of disputes between customers and members or associated persons (*i.e.*, customer disputes) governed by

the Code of Arbitration Procedure for Customer Disputes (Customer Code).[6] However, some apply to the arbitration of disputes between members, members and associated persons, or associated persons (*i.e.*, intra-industry disputes) governed by the Code of Arbitration Procedure for Industry Disputes (Industry Code).[7] Other concerns and recommendations are more procedural and apply to both customer and intra-industry disputes.

FINRA is committed to making changes to its rules, guidance and processes, and addressing challenging issues facing its arbitration forum. For example, FINRA recently amended its rules to make a number of significant enhancements to the process relating to the expungement of customer dispute information, addressing concerns with the expungement process at the time and providing additional safeguards to help ensure that registration information about associated persons is accurate and complete.[8] In addition, as discussed in more detail below, FINRA has focused on ways to strengthen its rules to reinforce payment of arbitration awards in its forum.[9]

FINRA has also already addressed some of the recommendations commenters raised in response to the rule modernization *Notices*. For example, in May 2025, FINRA changed the employment and educational qualifications for new arbitrators, such that applicants must have a four-year college degree and at least five years of full-time paid professional work experience, either inside or outside of the securities industry.[10] In July 2025, FINRA enhanced its current voluntary "Short List Option" program to provide parties with additional short list options when replacing arbitrators.[11] In addition, FINRA recently amended its rules to expressly provide that, at any stage of an arbitration proceeding, the Director[12] may remove an arbitrator if all the named parties agree in writing to the arbitrator's removal.[13] Discussions regarding potential updates to FINRA's discovery rules and procedures with FINRA's National Arbitration and Mediation Committee (NAMC)[14]—informed by a subcommittee of NAMC members focused solely on discovery-related issues (Discovery Subcommittee) that has been meeting regularly since June 2024—are well underway.[15] FINRA is also reviewing whether to increase the honoraria payments that arbitrators receive for services they provide to FINRA's arbitration forum.[16] However, further work in these areas may benefit from additional comment.

In addition, some of the concerns raised in response to the rule modernization *Notices* involve controversial issues that have been discussed in connection with FINRA's arbitration forum for years, including by the previously formed task forces,[17] and would benefit from additional input regarding modern practices and how FINRA's arbitration forum works today for participants. While the rule modernization *Notices* elicited valuable

feedback on arbitration-related concerns, those *Notices* covered a variety of topics and did not request specific comment on arbitration. To ensure FINRA is hearing from the full range of interested parties, this *Notice* requests comment generally on FINRA's arbitration process; key areas of concern commenters already raised; and other more specific rules, guidance and processes relating to FINRA's arbitration forum. FINRA is grateful for the comments submitted in connection with the rule modernization *Notices* and will consider responses to any earlier requests for comment. Interested parties may wish to supplement their comments but need not resubmit materials they have previously shared.

To aid interested parties in their consideration of the issues presented, this *Notice* first provides background on securities arbitration and FINRA's arbitration forum, including when parties to a customer dispute are required to arbitrate in FINRA's arbitration forum. The *Notice* then outlines the issues and seeks comment on how FINRA can further evolve its arbitration rules, guidance and processes. While the *Notice* highlights certain rules, guidance and processes for comment, comments need not be limited to the topics and questions FINRA identifies below.

As part of these efforts, FINRA will continue to engage in its normal rulemaking process to propose any specific rule amendments, which includes discussions with the FINRA Board, input from FINRA's advisory committees, including the NAMC, and an opportunity for comment on specific proposed revisions in a *Notice* or rule filing with the Securities and Exchange Commission (SEC or Commission) or both. Before becoming effective, a proposed rule change must be authorized by the FINRA Board and approved by the SEC.[18]

B. History of Securities Arbitration

Arbitration in the broker-dealer industry has been conducted for many years,[19] and subject to oversight by the SEC since 1934. As early as 1935, the SEC commented on the arbitration forum the NYSE operated.[20] In 1976, the SEC established an Office of Consumer Affairs, whose mandate was to explore alternative methods for the resolution of disputes between individual customers and brokers and firms, including establishing a single nationwide system for customer dispute resolution.[21] Ultimately, the SEC concluded that litigation is a burdensome and complex option, as well as cost prohibitive, for customers with small claims.[22]

In light of the fact that several SROs maintained separate arbitration fora at the time, the SEC decided not to impose rules related to customer dispute resolution as long as the SROs took affirmative measures to provide

nationwide fora with uniform rules, accessibility for customers, convenient locations, fair fees and panels that included persons not engaged in the securities business.[23] For the past 50 years, the SEC has overseen the evolution of arbitration to resolve customer disputes against broker-dealers, including through the SRO rule filing process.

In 1968, approximately 150 years after NYSE included a general arbitration provision in its constitution, FINRA's predecessor, NASD, adopted its first arbitration code[24] and subsequently began administering an arbitration forum in January 1969.[25] NASD and NYSE administered separate arbitration fora until 2007 when FINRA was created through the consolidation of NASD and the member regulation, enforcement and arbitration operations of NYSE.[26] By this time, NASD was administering over 94 percent of customer disputes with broker-dealers[27] and had already assumed, by agreement, the arbitration functions of several SROs that closed their dispute resolution fora.[28] Today, FINRA continues to provide other SROs with dispute resolution services pursuant to Regulatory Services Agreements.[29]

C. FINRA's Arbitration Forum

Building on this long history, FINRA today operates the largest securities arbitration forum in the United States to assist in the resolution of monetary and business disputes involving customers, members and associated persons.[30] FINRA's role in the arbitration process is to administer cases brought to the forum in a neutral, efficient and fair manner, in accordance with its rules. In its capacity as a neutral administrator of the forum, FINRA does not have any input into the outcome of arbitrations. FINRA's arbitration forum is intended to provide impartial dispute resolution that is less costly and faster than traditional litigation. FINRA's arbitration forum charges low arbitration fees, provides a Discovery Guide for customer disputes, limits dispositive motions made prior to the party resting its case, and provides sanctions for frivolous motions and abusive motion practices.[31]

All rules related to FINRA's arbitration forum have been filed with and approved by the SEC, after a comment process and a finding by the SEC that such rules are in the public interest.[32] The SEC regularly examines FINRA's arbitration forum.

Arbitration awards in FINRA's arbitration forum are considered final and not currently subject to review or appeal through the FINRA forum. Nor are they appealable to FINRA itself. However, under the Federal Arbitration Act of 1925 (FAA)[33] parties have the right to challenge arbitration awards—whether rendered by an arbitration panel in FINRA's forum or a private arbitration forum—by filing a motion to vacate, modify or correct the award in a court of competent jurisdiction.[34]

From January 1, 2021, through December 31, 2025, parties filed 14,023 new cases in FINRA's arbitration forum. Of these, 8,707 involved customer disputes and 5,316 involved intra-industry disputes. From January 1, 2021, through December 31, 2025, 16,343 cases closed in FINRA's arbitration forum. Of these, 10,393 involved customer disputes and 5,950 involved intra-industry disputes.

To provide transparency, FINRA publishes detailed arbitration statistics on its website, including the number of cases filed and their respective outcomes.[35] Of the 10,393 arbitration cases involving customer disputes that closed, 13 percent (or 1,391 cases) closed by award and 71 percent (or 7,385 cases) settled prior to award.[36] Of the 1,391 arbitration cases involving customer disputes that closed by award, customers were awarded damages in 29 percent (or 409) of cases. Of the 1,391 arbitration cases involving customer disputes that closed by award, 734 arbitration cases closed by award after a hearing on the merits (*i.e.*, excluding cases dismissed prior to the hearing on the merits). Of those 734 arbitration cases, customers were awarded damages in 43 percent (or 313) of cases. Of the 5,950 arbitration cases that closed involving intra-industry disputes, 24 percent (or 1,429 cases) closed by award and 59 percent (or 3,499 cases) settled prior to award.[37] FINRA makes all awards publicly available on its website.[38]

FINRA's arbitration forum has 69 hearing locations—at least one in every state. Depending on the amount of damages being sought, disputes in FINRA's arbitration forum are heard by either a panel of three arbitrators or by a single arbitrator.[39] FINRA currently maintains a roster of approximately 8,000 arbitrators, conducts a comprehensive pre-approval background check on all arbitrator applicants, and provides arbitration training and continuing education for arbitrators. Members pay for most costs, and FINRA waives fees for customers and associated persons experiencing financial hardship.

D. Predispute Arbitration Agreements

Broker-dealers and investment advisers often require customers to enter into agreements to arbitrate disputes arising from the services provided to such customers, as a condition to opening an account. FINRA rules do not require such agreements, nor do they preclude customers from pursuing relief in state or federal courts.[40] However, FINRA rules establish certain minimum disclosure and related requirements regarding the use of such agreements.[41]

Under FINRA rules, arbitration in FINRA's forum is required if there is a written agreement to arbitrate at FINRA or if requested by the customer, consistent with the long historical practice of the securities industry.[42] Even

with a predispute arbitration agreement, members and customers may elect, by mutual consent after a dispute has arisen, to resolve their disputes in a forum other than at FINRA, such as at a private arbitration forum (*e.g.*, the American Arbitration Association (AAA), JAMS) or by civil litigation. In addition, if a written agreement to arbitrate at FINRA does not exist and if the customer does not request FINRA arbitration, the parties to a dispute may agree to resolve their disputes at a private arbitration forum or in civil litigation. FINRA rules also protect a customer's right to pursue class actions in court notwithstanding any predispute arbitration agreement.[43]

E. The Federal Arbitration Act

Overlaying FINRA's arbitration forum and rules is the FAA.[44] This law establishes a liberal federal policy favoring arbitration agreements. A rich and variegated case law has developed under the FAA, including a number of Supreme Court cases. The FAA implicates several significant issues relating to FINRA's arbitration rules and processes. Thus, in commenting on the issues below, FINRA requests that commenters be mindful of how any suggested changes may implicate the FAA and the related judicial precedent.

II. Discussion

This section outlines issues raised relating to FINRA's arbitration forum and seeks comment on how FINRA can further evolve its arbitration rules, guidance and processes.

A. Forum Selection

(i) Customer Disputes

Rule 12200 requires parties to arbitrate certain disputes under the Customer Code if arbitration is either required by a written agreement or requested by the customer; 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.[45] This rule preserves a customer's ability to resolve disputes through FINRA arbitration, regardless of whether arbitration is required by a written agreement.[46]

The question of whether forum selection clauses in members' customer agreements requiring resolution of disputes in court or an alternative arbitration forum violates FINRA rules has been a topic of discussion for years. For example, the 2014 Task Force stated in its report that it "was in agreement that interpreting a forum selection clause as a waiver of a retail customer's right to arbitrate pursuant to FINRA rules is against public policy."[47] In 2016, FINRA published *Regulatory Notice 16-25* to remind

members 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 clause specifying another dispute resolution venue other than FINRA's arbitration forum.[48]

At the time FINRA published *Regulatory Notice 16-25*, federal appellate court decisions in the Second and Ninth Circuits had held in cases involving institutional customers that forum selection clauses in agreements between FINRA members and the customers that required resolution of issues in court superseded the requirements of Rule 12200.[49] In addition, the Fourth Circuit had held in a case involving institutional customers that a forum selection clause that required resolution of disputes in court did not have the effect of superseding or waiving the customer's right to arbitration.[50] However, the Fourth Circuit also determined that the obligation to arbitrate under Rule 12200 can be superseded and displaced by a more specific agreement between the parties.[51]

Since the publication of *Regulatory Notice 16-25*, the Third Circuit also has considered whether forum selection clauses in agreements between a FINRA member and an institutional customer that required resolution of disputes in court superseded the requirements of Rule 12200.[52] The Third Circuit agreed with the Fourth Circuit that the forum selection clauses were insufficient to waive the customer's right to arbitration under Rule 12200.[53] The Third Circuit noted that had the broker-dealer wanted the customer to waive its right to arbitrate, the broker-dealer should have referenced arbitration in the agreements.[54] The Third Circuit also stated it was "reluctant to find an implied waiver" because the customer's "right to arbitrate is not contractual in nature, but rather arises out of a binding, regulatory rule that has been adopted by FINRA and approved by the SEC."[55] The Third Circuit declined to address whether an explicit waiver would violate Section 29(a) of the Exchange Act, which provides that "[a]ny condition, stipulation, or provision binding any person to waive compliance with . . . any rule of a self-regulatory organization . . . shall be void."

In response to the rule modernization *Notices*, FINRA received feedback saying that Rule 12200 should be amended to allow members to contractually agree to opt out of FINRA arbitration and arbitrate disputes in alternative fora when the claim is seeking damages over a certain dollar amount or involves counterparties that qualify as institutional customers under FINRA rules.[56] FINRA also received feedback rejecting this recommendation as it pertains to claims seeking damages over a certain dollar amount.[57]

From January 2016 through June 2025, there were 21,521 cases filed by a customer after January 2011 that closed in FINRA's arbitration forum. Of the 21,521 cases, approximately 1 percent (252 cases) related to claims that were greater than $10 million, and 6 percent (1,254 cases) related to claims that were between $1 million and $10 million. (Some cases did not specify a claim amount.) Of the 21,521 cases, approximately 14 percent (2,931 cases) closed by award, 72 percent (15,519 cases) settled prior to award, 9 percent (2,025 cases) were withdrawn, and 5 percent (1,046 cases) closed by other means (*e.g.*, bankruptcy of critical party, uncured deficient claim, forum denied or stayed by court action). Of the 2,931 awards rendered, only 14 awards (or less than 1 percent of awards) exceeded $10 million in monetary damages (some including punitive damages and attorneys' fees), and 25 awards (or less than 1 percent of awards) exceeded $5 million in monetary damages (some including punitive damages and attorneys' fees).

Alternatively, FINRA has received feedback that FINRA rules should allow customers to choose whether to resolve disputes in FINRA's arbitration forum or court.[58]

Request for Comment

A(i).1. Should certain categories of claims (*e.g.*, of a certain complexity or value) or customer dispute types (*e.g.*, those involving institutional customers or holders of institutional accounts) be subject to different requirements under FINRA rules? For example:

a. Should certain categories of claims or customer dispute types be subject to different procedural requirements under FINRA rules, such as allowing the parties to have more control over the administration of their case?[59] What customer protection and fairness considerations should be part of evaluating this question?

b. 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.[60] Should certain other categories of claims or customer dispute types be considered by a panel with additional qualifications or experience? If so, what types of claims or customer disputes and what should be the minimum additional qualifications or experience of the panel? What customer protection and fairness considerations should be part of evaluating this question?

A(i).2. Should FINRA no longer allow in its arbitration forum certain categories of claims (*e.g.*, of a certain complexity or value) or customer dispute types (*e.g.*, those involving institutional customers or holders of institutional

accounts)? What customer protection and fairness considerations should be part of evaluating this question?

A(i).3. Should FINRA allow parties to contractually agree in advance to opt out of FINRA arbitration and arbitrate disputes in alternative fora for certain categories of claims (*e.g.*, of a certain complexity or value) or customer dispute types (*e.g.*, those involving institutional customers or holders of institutional accounts)? What customer protection and fairness considerations should be part of evaluating this question?

A(i).4. Should customers be allowed to unilaterally choose, post dispute, between arbitration and litigation even if they signed a customer agreement with an alternative forum selection clause? Alternatively, should FINRA permit arbitration in its forum only where both parties agree to such arbitration post dispute? What fairness considerations should be part of evaluating this question?

A(i).5. Do participants still experience FINRA arbitration as less expensive and faster than litigation? Are there changes that FINRA should consider making to its arbitration forum to make it more expeditious and cost effective relative to courts?

(ii) Industry Disputes

FINRA Rule 13200 (Required Arbitration) requires members and associated persons to arbitrate certain disputes under the Industry Code if the dispute arises out of the business activities of a member or an associated person and is between or among members; members and associated persons; or associated persons.[61]

The Form U4 (Uniform Application for Securities Industry Registration or Transfer) requires associated persons to sign the Form U4 as a condition of employment in the securities industry and requires associated persons to submit to arbitration any claim that is eligible for arbitration under the rules of the SRO with which they register.[62]

In response to the rule modernization *Notices*, FINRA has received feedback suggesting that Rule 13200 be amended to allow parties to enter agreements that waive the requirement to arbitrate in FINRA's arbitration forum and permit arbitration in alternative fora.[63] FINRA also has received feedback that FINRA should not amend Rule 13200 in this manner.[64]

Request for Comment

A(ii).1. Should FINRA amend its rules to no longer require disputes arising out of the business activities of members or associated persons to be arbitrated under the Industry Code? What fairness considerations should be part of evaluating this question?

A(ii).2. Should FINRA no longer require specific types of disputes arising out of the business activities of members or associated persons to be arbitrated under the Industry Code? If so, what types of disputes and among which parties? What fairness considerations should be part of evaluating this question?

B. Eligibility and Motions to Dismiss

(i) Eligibility

a. History of Eligibility Rule in FINRA's Arbitration Forum

FINRA's arbitration forum requires claims to be made within a certain defined time period of the occurrence or event giving rise to the claim. A time limit on matters eligible for arbitration has existed since NASD adopted its first arbitration code in 1968.[65] The original purpose of this time limit, or "eligibility rule," was to prevent aged claims from being brought into the arbitration forum and was informed by Rule 17a-4 under the Exchange Act, which generally requires broker-dealers to maintain records for at least six years.[66]

The 1994 Task Force made several recommendations urging NASD to address issues of timeliness of claims, including suspending the eligibility rule for three years and, ultimately, repealing it; adopting procedures for arbitrators to resolve statute of limitations issues earlier in the case and based on applicable law; and prohibiting parties from litigating procedural arbitrability issues in court until after an award was rendered.

These recommendations generated significant opposition from customers and members.[67] First, customers objected to a temporary repeal of the eligibility rule as it would result in disparate treatment of claims based solely on filing date. Members argued that if the eligibility rule was temporarily or permanently repealed, members would not be able to predict or manage the risk of exposure to very old claims. Second, customers and members believed that adopting a prehearing procedure for resolving statute of limitation issues would add unnecessary burdens and delays. In addition, they argued that requiring arbitrators to resolve statute of limitations issues based on applicable law would create a contractual limitation on the arbitrator's authority to decide these issues and make it easier to overturn an arbitration award (as compared to the higher standard of

judicial review in the absence of a contractual limitation). Finally, customers and members agreed that eligibility decisions should occur early in a case and should be final, but members wanted the decisions to be immediately reviewable in court.[68]

In 1997, NASD took a different approach and filed proposed amendments that would have retained the six-year eligibility requirement and provided that, among other things, all claims filed would be eligible for arbitration unless the Director determined that the claim is ineligible.[69] However, the rule filing was ultimately withdrawn in light of the Supreme Court decision in *Howsam*.[70] In this decision, the Supreme Court held that "the applicability of the NASD time limit rule is a matter presumptively for the arbitrator, not for the judge."[71] Following *Howsam*, NASD adopted amendments to conform to the Supreme Court's ruling to state explicitly that eligibility determinations are made by arbitrators and to provide additional notice and guidance to parties on this issue.[72]

b. FINRA's Eligibility Rule

FINRA Rules 12206 and 13206 (Time Limits) provide that a claim is not eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim.[73] The eligibility rule applies to all arbitration claims, including those requesting expungement of customer dispute information. The eligibility rule does not extend applicable statutes of limitations and does not apply to any claim that is directed to FINRA arbitration by a court of competent jurisdiction upon request of a member or associated person.[74] However, when a claimant files a FINRA arbitration claim, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.[75] If a party submits a claim to a court of competent jurisdiction, the six-year time limitation in the FINRA eligibility rule will not run while the court retains jurisdiction of the claim matter.[76] The panel will resolve any questions regarding the eligibility of a claim.[77] In addition, a party whose claim is dismissed pursuant to Rule 12206 or 13206 may still pursue their claim in court.[78]

In 2021, FINRA issued a reminder to members that when using predispute arbitration agreements for customer accounts, FINRA rules establish minimum disclosure requirements and prohibit predispute arbitration agreements from including conditions that, among other things, limit or contradict FINRA rules.[79] In particular, FINRA explained that "[s]ome customer agreements attempt to shorten or extend applicable statutes of limitations."[80] FINRA reiterated that Rule 12206 allows arbitration claims to be submitted unless six years have elapsed from the occurrence or event giving

rise to the claim, and that the arbitrator or panel resolves any questions regarding the eligibility of a claim under Rule 12206 or under an applicable state statute of limitations.[81] Thus, FINRA clarified that customer agreements may not be used to shorten or extend statutes of limitations or require that a question of whether a time limitation applies be judicially determined instead of being submitted to an arbitrator or panel.[82]

Over the years, FINRA has developed training and other materials intended to educate arbitrators on the eligibility rule. For example, FINRA's Basic Arbitrator Training Program transcript explains that "[a] claim is not eligible for arbitration when six years have elapsed since the event giving rise to the claim."[83] The transcript informs arbitrators that they should consider whether a continuing occurrence or event is giving rise to the dispute, such as when a customer may have purchased stock 10 years ago, but alleges ongoing fraud starting with the purchase which continued to a date within six years of the claim's filing date.[84] The transcript clarifies that the eligibility rule is separate from any state or federal time limits for filing a claim, and that even if a claim is filed within the six-year eligibility period, federal or state statutes may preclude an award for events during the six-year period.[85] The transcript states whether statutes of limitations are applicable depends on the nature of the allegations and the law of the relevant jurisdiction, and arbitrators may ask parties for instructions on these issues.[86]

c. Views on Eligibility Rule

In response to the rule modernization *Notices*, FINRA has received diverse comments on the eligibility rule. Broadly, some feedback advocated that FINRA should eliminate the eligibility rule.[87] Other feedback argued that the eligibility rule should be treated as a statute of repose, not a statute of limitations (*i.e.*, all securities transactions or wrongful events that occurred prior to six years from the date a claim is filed should not be eligible for FINRA arbitration).[88] Relatedly, concerns were expressed that FINRA's guidance regarding the eligibility rule is overbroad.[89]

Over the years, differing views have been expressed regarding when the six-year time limit should begin to run. Some assert that, because the plain language of the eligibility rule does not indicate that the six-year time limit begins to run on the date of the transaction or purchase, arbitrators may interpret the eligibility rule to allow claims in FINRA's arbitration forum where a customer purchased a security more than six years before the claim was filed. Some assert that the eligibility rule is akin to a statute of limitations, which are typically subject to tolling at the arbitrators' discretion in cases where there is fraudulent concealment or when the customer did

not discover the alleged misconduct or injuries until months or years after the fact. Some argue that where damages are an element of the claim alleged, a claim does not begin to accrue until a customer suffers damages, and that ongoing damages within a six-year period make a claim eligible for arbitration.

On the contrary, others assert that the eligibility rule should be a strict eligibility requirement or statute of repose and bar claims that arose from transactions or wrongful events that occurred more than six years prior to a claim being filed in FINRA's arbitration forum. Some assert that the claim must be brought within six years of the purchase of a security or date of the transaction, which aligns with the SEC's requirement that broker-dealers maintain records of all purchases and sales of securities for six years.

Some argue that claims should be dismissed on eligibility grounds early in proceedings to prevent the costs associated with protracted arbitration. Others assert that an inherent conflict exists when arbitrators are permitted to determine the eligibility of claims, where denying a motion to dismiss based on eligibility means that the case will continue and the arbitrator will benefit by way of experience and compensation.

Request for Comment

B(i).1. Should FINRA eliminate the eligibility rule and allow eligibility to be determined solely by applicable statutes of limitations? What would be the impacts on parties, if any, including on recordkeeping burdens and forum accessibility? What fairness considerations should be part of evaluating this question?

B(i).2. Should FINRA amend the eligibility rule to expressly allow claims in FINRA's arbitration forum that arise from transactions or wrongful events that occurred more than six years prior to the claim being filed if, for example, there are ongoing damages or concealment of the harm? What fairness considerations should be part of evaluating this question?

B(i).3. Should FINRA amend the eligibility rule to expressly provide that the rule is a statute of repose, barring claims based on securities transactions or wrongful events that occurred more than six years before a claim is filed? How would this approach affect claims related to a continuing occurrence (*e.g.*, allegations of ongoing fraud starting with the purchase of a stock 10 years ago but continuing to a date within six years of the date the arbitration claim was filed)? What fairness considerations should be part of evaluating this question?

B(i).4. Are there other approaches to the applicability of the eligibility rule that FINRA should consider?

(ii) Motions to Dismiss

FINRA's arbitration forum is intended to be both fair and efficient. Extensive use of dispositive motions, as in court, can hamper an efficient arbitration process. Thus, Rules 12504 and 13504 specify procedures that govern motions to dismiss, which are requests made to the arbitration panel to remove a party or some or all claims raised by a party filing a claim. FINRA rules permit a panel to grant a motion to dismiss a party's case after the conclusion of the case in chief.[90] However, motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.[91]

Among other requirements, parties must file prehearing motions to dismiss in writing, separately from the answer, and only after they file the answer.[92] The full panel of arbitrators must decide a motion to dismiss,[93] and the panel may not grant a motion to dismiss unless a prehearing conference on the motion is held or waived by the parties.[94] If a panel grants a motion to dismiss, the decision must be unanimous and accompanied by a written explanation.[95] If the panel denies a motion to dismiss, the moving party may not re-file the denied motion, unless specifically permitted by panel order.[96] In addition, if the panel denies a motion to dismiss, the panel must assess forum fees associated with hearings on the motion against the moving party.[97] If the panel deems a motion to dismiss as frivolous, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.[98] The panel also may issue other sanctions under Rules 12212 and 13212 if it determines that a party filed a motion to dismiss in bad faith.[99]

Rules 12504 and 13504 provide that a panel cannot act upon a prehearing motion to dismiss a party or claim unless the panel determines that: (1) the non-moving party previously released the claims in dispute by a signed settlement agreement or written release; (2) the moving party was not associated with the account, security or conduct at issue; or (3) the non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award or decision.[100]

FINRA implemented procedures to govern motions to dismiss following complaints that parties were filing prehearing motions routinely and repetitively in an apparent effort to delay scheduled hearing sessions on the merits, increasing customers' costs to defend against these motions.[101] The amendments were intended to balance competing interests—a party's right to have their claim heard by a panel against a party's right to challenge a claim they believe lacks merit.

The 2014 Task Force heard concerns that FINRA rules were not sufficiently deterring abusive motion practice and reviewed statistical data on the number of prehearing motions to dismiss.[102] The 2014 Task Force determined that the rules appeared to be working as intended and there was no evidence of abuse of the current rules; thus, the task force did not recommend any action.[103] In addition, the 2014 Task Force addressed concerns that the current motions to dismiss rules were too restrictive, and recommended adding a category for which motions to dismiss may be made before the conclusion of the case in chief, *i.e.*, where the dispute has been previously concluded through adjudication or arbitration and memorialized in an order, judgment, award or decision.[104] In response, in 2017, FINRA amended Rules 12504 and 13504 to provide that arbitrators may act upon a motion to dismiss a party or claim prior to the conclusion of a party's case in chief if the arbitrators determine that the non-moving party previously brought a claim regarding the same dispute against the same party, and the dispute was fully and finally adjudicated on the merits and memorialized in an order, judgment, award or decision.[105]

In response to the rule modernization *Notices*, FINRA has received feedback that it should amend its rules to expand the circumstances under which the panel may act upon a prehearing motion to dismiss a party or claim (*e.g.*, motions filed by clearing firms based on the nature of their operations),[106] and by permitting parties to file motions to dismiss before the answer due date.[107] Conversely, FINRA has received other feedback opposing any expansion of the grounds for motions to dismiss.[108]

Request for Comment

B(ii).1. Should FINRA change the timing or expand the circumstances under which the panel may act upon a prehearing motion to dismiss a party or claim? If so, what should those changes be? What customer protection and fairness considerations should be part of evaluating this question?

C. Arbitrator Qualifications

Decisions in FINRA's arbitration forum are made by independent arbitrators.[109] FINRA seeks to recruit candidates from a variety of backgrounds and areas of professional expertise.[110] Although previous legal experience is not required to serve as an arbitrator, FINRA has focused on recruiting more attorneys to serve as arbitrators.[111]

Prior to May 24, 2025, FINRA required new arbitrators to have a minimum of five years of paid business or professional employment experience (or a combination of both), either inside or outside of the securities industry,

and to have completed at least two years of college-level credits from an accredited institution (*i.e.*, 60 credits). Effective May 24, 2025, FINRA changed the employment and educational qualifications for new arbitrators such that applicants must have a four-year college degree and at least five years of full-time paid professional work experience, either inside or outside of the securities industry.[112] Notwithstanding meeting the employment and educational qualifications, in some instances, an individual may be temporarily or permanently disqualified from serving as a FINRA arbitrator.[113]

In response to the rule modernization *Notices*, FINRA has received feedback addressing arbitrator qualifications. Some feedback has recommended that FINRA consider additional steps to increase the number of arbitrators with arbitration process and subject matter expertise.[114] Conversely, other feedback has urged FINRA to halt implementation of the new arbitrator qualifications and "focus on reforms that broaden, rather than narrow, access to a diverse and capable arbitrator pool."[115]

Request for Comment

C.1. What is the appropriate composition of the arbitrator roster in FINRA's arbitration forum for customer disputes and intra-industry disputes? Should the arbitrator rosters be the same or different? Should FINRA continue to seek candidates from a variety of backgrounds, or should FINRA be guided more by other considerations such as specific types of expertise?

C.2. What further changes, if any, should FINRA make to its arbitrator standards? How should FINRA identify minimum employment, experience and educational qualifications that would assure a broad candidate pool while maintaining its decision-making quality? For example, should FINRA accept equivalent professional certifications or specialized credentials in lieu of a four-year college degree?

D. Arbitrator Classification and Selection

FINRA maintains three rosters of arbitrators: public arbitrators, non-public arbitrators, and arbitrators who are eligible to serve as chairperson of a panel.[116] In general, a non-public arbitrator is a person who is otherwise qualified to serve as an arbitrator and is disqualified from service as a public arbitrator due to their current or previous association with the financial industry.[117] A public arbitrator is a person who is not disqualified from service as a public arbitrator due to their current or past ties to the financial industry.[118] An arbitrator is eligible to serve as a chairperson if they have completed FINRA's chairperson training and (1) have a law degree and are a member of a bar of at least one jurisdiction and have served as

an arbitrator through award on at least one arbitration administered by an SRO in which hearings were held; or (2) have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.[119]

To ensure fairness to all parties during arbitrator list selection, FINRA uses a computer algorithm, known as the list selection algorithm, to generate lists of arbitrators on a random basis from its rosters of arbitrators for the selected hearing location.[120] The number and composition of the arbitrator lists that are generated using the list selection algorithm varies depending on the nature of the dispute and whether it will be heard by a panel of three arbitrators or by a single arbitrator. For example, with respect to customer disputes with three arbitrators,[121] FINRA uses the list selection algorithm to generate three lists: (1) a list of 10 public arbitrators from the FINRA chairperson roster (chairperson list); (2) a list of 15 arbitrators from the FINRA public arbitrator roster (public list); and (3) a list of 10 arbitrators from the FINRA non-public arbitrator roster (non-public list).[122]

Once the lists of arbitrators are generated,[123] the Director sends the lists to the parties.[124] The parties then select their arbitrators through a process that involves striking and ranking the arbitrators on the lists. In customer disputes with three arbitrators, each separately represented party may strike up to four of the arbitrators from the chairperson list and up to six of the arbitrators from the public list for any reason.[125] In addition, each separately represented party may strike any or all of the arbitrators from the non-public list for any reason.[126] By striking all the arbitrators on the non-public list, any party may ensure that the panel will have three public arbitrators.[127]

In 2025, 140 arbitration cases involving customer disputes decided by three arbitrators closed by award in FINRA's arbitration forum. Of these, 109 cases were decided by three public arbitrators (all-public panels) and 31 were decided by two public arbitrators and one non-public arbitrator (majority-public panels). Customers were awarded damages in 35 percent of cases (or 38 of 109 cases) decided by all-public panels and 29 percent of cases (or 9 of 31 cases) decided by majority-public panels.[128]

In response to the rule modernization *Notices*, FINRA received feedback that it should reclassify certain non-public arbitrators as public to expand the public roster.[129] FINRA also received feedback that it should revise Rule 12403, which currently provides that parties in customer disputes with three arbitrators may strike any or all of the arbitrators from the non-public list for any reason.[130] FINRA also received feedback that all claimants, collectively, and all respondents, collectively, should share the same number of strikes during arbitrator selection.[131]

Request for Comment

D.1. Should FINRA amend the definition of "public arbitrator" provided in Rules 12100(aa) and 13100(x) to modify or remove any of the criteria that disqualify an arbitrator from service as a public arbitrator to expand the public roster? If so, which criteria and why?

D.2. Should FINRA amend Rule 12403(c)(1)(A) to remove parties' ability to strike all the arbitrators from the non-public list for any reason? What customer protection and fairness considerations should be part of evaluating this question?

D.3. At initial panel selection, should each separately represented party strike and rank arbitrators, or should FINRA amend its rules to provide that all claimants, collectively, and all respondents, collectively, share the same number of strikes during arbitrator selection?

D.4. To increase parties' choice of arbitrators during the selection process, should FINRA increase the number of arbitrators on each list and the proportional number of strikes for each list?

E. Arbitrator Training

FINRA is committed to training arbitrators regarding the arbitration process so that they understand their role, authority and responsibilities in performing their arbitral duties. To that end, arbitrators are not eligible to serve on FINRA arbitration cases until they have successfully passed the Basic Arbitrator Training Program.[132] The first 15 modules of the program cover each stage of the arbitration process and review the procedures that arbitrators must follow to successfully serve on an arbitration case. The final module of the program covers the expungement process, which includes a separate, required assessment. In addition to the required Basic Arbitrator Training Program, FINRA requires advanced training for arbitrators to qualify as chairpersons[133] and for certain arbitrators who decide certain requests to expunge customer dispute information.[134]

In addition to the required training, FINRA provides voluntary training and other resources to further educate arbitrators. After successfully completing the Basic Arbitrator Training Program, arbitrators may attend a voluntary orientation to meet FINRA staff and ask questions about serving on the roster.[135] Arbitrators may also complete other voluntary, subject-specific training modules that are available on FINRA's website.[136] The Arbitrator's Guide is another resource for arbitrators that contains information about FINRA's arbitration forum, policies and procedures.[137]

FINRA periodically provides updates and reminders to arbitrators regarding FINRA rules and procedures by way of Neutral Workshop videos and a quarterly newsletter, *The Neutral Corner*, both of which are available on FINRA's website.[138] Similarly, FINRA sends a monthly email notification to FINRA arbitrators that provides updates on rule proposals and training opportunities, among other things.[139]

As neutral administrator of the arbitration forum, FINRA does not have any input into the outcome of arbitrations and decisions are made by the independent arbitrators selected by the parties. Thus, any training that FINRA currently provides to arbitrators is focused on procedural matters.[140]

In response to the rule modernization *Notices*, FINRA has received varied feedback about whether it should implement enhanced training and continuing education requirements for all arbitrators, including with respect to substantive elements of the law.[141] FINRA also received feedback that it should address poorly performing arbitrators by, for example, providing additional training.[142]

Request for Comment

E.1. Should FINRA implement additional training requirements on the arbitration process for all arbitrators beyond the Basic Arbitrator Training Program? If so, what elements should be added or reinforced?

E.2. Should FINRA implement additional training requirements for arbitrators who decide certain categories of claims (*e.g.*, of a certain complexity or dollar amount) beyond the Basic Arbitrator Training Program (*e.g.*, like how certain arbitrators must complete the enhanced expungement training FINRA provides prior to considering certain requests to expunge customer dispute information)? If so, what should that training encompass? Should it be focused on process issues or include substantive elements?

E.3. Should FINRA implement additional training requirements on substantive elements of law or complex investment products for all arbitrators beyond the Basic Arbitrator Training Program? If so, would this raise concerns from forum participants with respect to FINRA maintaining neutrality as the administrator of the forum?

E.4. To what extent should additional training be voluntary versus mandatory? What might be the potential impact on arbitrators' willingness to serve in FINRA's arbitration forum if FINRA imposes additional mandatory training requirements to serve on cases in FINRA's arbitration forum?

F. Discovery

As noted above, discussions regarding potential updates to FINRA's discovery rules and procedures—including the Discovery Guide—remain ongoing with input from the NAMC and its Discovery Subcommittee.[143] These discussions have included how to address concerns commenters raised in response to the rule modernization *Notices*. For example, in response to commenters, FINRA is developing a voluntary meet and confer program at the outset of an arbitration for parties to discuss discovery issues.[144] In addition, discussions are underway to address challenges related to e-discovery[145] and discovery abuses such as frivolous or boilerplate objections that cause delays in producing relevant documents.[146]

Also in response to the rule modernization *Notices*, FINRA received feedback that it should establish a process for arbitrators to escalate certain discovery issues (*e.g.*, related to privilege) to, for example, a specialized person or group;[147] conversely, others asserted such a process would increase complexity and delay the arbitration proceedings.[148] FINRA also received feedback that it should limit the number and scope of document requests, require arbitrators to set and enforce discovery cutoff dates, and implement a higher standard of need for additional discovery requests;[149] conversely, others asserted that FINRA should not implement recommendations that limit discovery.[150] Finally, FINRA received feedback that respondents in customer arbitrations be required to disclose, in confidence during discovery (*i.e.*, the information is inadmissible at the hearing), the existence and extent of any insurance coverage.[151]

Parties may request discovery of documents, names of witnesses and other information from each other to prepare their cases for the arbitration hearing. Parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration.[152]

With respect to customer disputes, FINRA provides a Discovery Guide to supplement the discovery rules and help guide the parties and arbitrators through the discovery process.[153] The Document Production Lists, which are included in the Discovery Guide and described in Rule 12506, outline presumptively discoverable documents that the parties should exchange without arbitrator or FINRA staff intervention in all customer arbitrations (except in certain simplified customer arbitrations, unless the customer requests that the Document Production Lists apply).[154] Document Production List 1 outlines the documents that members and associated persons shall produce; Document Production List 2 outlines the documents that customers shall produce.[155] Unless the parties agree otherwise, parties must respond

to the Document Production Lists within 60 days of the answer due date.[156] A party must act in good faith when responding to the Document Production Lists and establish a reasonable timeframe to produce a document if it cannot be timely produced.[157] In addition to the Document Production Lists, parties may make other discovery requests.[158]

With respect to all disputes, parties may make written discovery requests.[159] Requests for information are generally limited to identification of individuals, entities and time periods related to the dispute; they should also be reasonable in number and not require narrative answers or fact finding.[160] Requests for documents or information should be specific and relate to the matter in controversy.[161] Standard interrogatories are generally not permitted in arbitration,[162] and depositions are strongly discouraged.[163] Parties may serve a discovery request on a party 45 days or more after the statement of claim is served on that party,[164] and unless the parties agree otherwise, a party must respond within 60 days of receipt.[165] A party must act in good faith when responding to discovery requests and establish a reasonable timeframe to produce a document if it cannot be timely produced.[166]

If a party objects to production, the party must specifically identify in writing which document or requested information it is objecting to and why.[167] If a party objects to production or otherwise fails to comply with FINRA rules related to discovery requests, another party may make a motion to compel asking the panel to order production.[168] Motions to compel discovery must include, among other things, a description of the moving party's efforts to resolve the issue before making the motion.[169]

FINRA provides training and other resources to arbitrators regarding the discovery process.[170] For example, the mandatory Basic Arbitrator Training Program (discussed above) includes a module dedicated to the IPHC and discovery process. The learning objectives of this module include, among other things, understanding the discovery process and timelines; ruling on discovery requests based on the papers; and imposing discovery sanctions when a party fails to provide sufficient information or documents.[171] In addition, FINRA requires advanced training for arbitrators to qualify as chairpersons.[172] The chairperson training includes modules dedicated to discovery issues and prehearing discovery conferences.[173] Arbitrators may also complete other voluntary, subject-specific training modules that are available on FINRA's website, including a course titled "Discovery, Abuses and Sanctions."[174]

FINRA also provides guidance to parties regarding the discovery process including, for example, a web page providing an overview of discovery, information in the Party's Reference Guide and a video that was recently published on FINRA's website titled "What to Expect During the Discovery Process."[175]

Request for Comment

F.1. Are the Document Production Lists in the Discovery Guide appropriately tailored to facilitate the efficient exchange of relevant information in customer arbitrations? Do the Document Production Lists impose burdens associated with overly broad or duplicative document production requirements?

F.2. Should FINRA establish a process or resource to assist arbitrators in resolving complex discovery disputes? Would such a mechanism improve consistency and efficiency, or would it create routine delays and undermine arbitrator decision making?

F.3. Should FINRA impose limitations or heightened standards for making discovery requests beyond the Document Production Lists? How should FINRA balance efficiency and cost effectiveness of the arbitration process with parties' desire to obtain more information to present their cases?

F.4. Should FINRA amend the Discovery Guide—and more specifically, Document Production List 1—to require members and associated persons in customer disputes to produce, on a confidential basis during discovery, documents concerning the existence and extent of any insurance coverage? How would this impact the efficiency and fairness of the arbitration process?

F.5. Should FINRA consider additional methods to address discovery abuses? If so, what methods should be considered?

G. Hearing Oversight and Efficiency

In response to the rule modernization *Notices*, FINRA has received feedback that, to improve the efficiency of arbitration proceedings, FINRA should establish a central contact point to assist arbitrators with procedural or evidentiary questions during proceedings.[176] In addition, FINRA has received feedback that it should establish more stringent parameters for both oversight of hearings by arbitrators[177] and FINRA oversight of arbitrators.[178]

Expeditious resolution of disputes is one of the principal goals of arbitration. For example, FINRA Rules 12501 and 13501 (Other Prehearing Conferences) provide that the panel may schedule a prehearing conference regarding any

outstanding preliminary matters, including any other matter that will simplify or expedite the arbitration. In addition, Rules 12505 and 13505 provide that parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration.

To aid arbitrators in administering hearings efficiently, FINRA periodically provides resources and reminders to arbitrators so that they understand their role, authority and responsibilities in performing their arbitral duties.[179] Arbitrators can also advance this goal by scheduling evidentiary hearings within nine months or less after the IPHC,[180] refraining from postponing hearings on their own accord,[181] and managing the time during hearings to minimize, whenever possible, the number of hearing sessions held.[182] In addition, the chairperson is authorized to act on behalf of the panel in issuing subpoenas, directing appearances, ordering the production of documents and information, setting deadlines and issuing any other order that may serve to expedite the process and permit any party to develop its case fully.[183]

FINRA also uses technology to support the efficient administration of arbitration proceedings. For example, FINRA uses an internal, web-based computer system—the Mediation and Arbitration Tracking and Retrieval Interactive Case System—to manage all arbitration and mediation cases in the forum and to maintain FINRA's neutral rosters. In addition, FINRA provides the Dispute Resolution Portal (DR Portal), which is a self-service system that allows participants in an arbitration or a mediation to log into a secure area of the FINRA website to submit documents and manage case information. The DR Portal has two parts: the Arbitrator and Mediator Portal for arbitrators and mediators[184] and the Party Portal for parties and their representatives.[185] To enhance efficiencies for parties and expedite case administration, FINRA amended its rules to require all parties, except *pro se* customers,[186] to use the Party Portal to submit documents and view arbitration case information and documents in most instances.[187]

Finally, with respect to FINRA's oversight of arbitrators on its roster, FINRA has a longstanding process to help assure that arbitrators meet the highest standards of ethical conduct, competence and impartiality. After undergoing a thorough application process and training, FINRA conducts ongoing arbitration performance monitoring and, when necessary, arbitrator counseling or removal.[188] FINRA monitors the performance of arbitrators through multiple feedback channels.[189]

Request for Comment

G.1. Should FINRA establish a central contact point or support system to assist arbitrators with procedural or evidentiary questions during proceedings? What should that resource look like? How should FINRA balance the possibility of that resource improving efficiency and consistency with the possibility that it could result in delays or undermine arbitrator decision making?

G.2. Should FINRA implement more stringent case management requirements? If so, what would those requirements look like and how should possible gains in efficiency be balanced with a party's ability to present their case?

G.3. Should FINRA increase its direct oversight of arbitrators and arbitration proceedings to identify and address case management and other issues in real time? If so, how should these issues be addressed?

G.4. What technological enhancements to FINRA's dispute resolution systems (*e.g.*, the DR Portal) would further improve case efficiency, accessibility or user experience? Are there further features that FINRA should consider implementing?

H. Punitive Damages

As discussed below, FINRA rules allow arbitrators to award punitive damages in FINRA's arbitration forum. However, whether there should be limitations on such awards in the forum has long been the subject of debate.

(i) History of Awarding Punitive Damages in FINRA's Arbitration Forum

Since 1989, SRO rules have required that arbitration awards contain the damages and other relief awarded and that predispute arbitration agreements cannot limit the ability of arbitrators to make any award (including an award of punitive damages). Specifically, in 1989, the Commission issued an order approving proposed rule changes by NASD, NYSE and the American Stock Exchange, Inc. (AMEX) relating to the arbitration process—for example, the content of arbitration awards—and the use of predispute arbitration clauses in customer agreements.[190] As a result, NASD, NYSE and AMEX amended their respective rules to provide that awards shall contain, among other things, the damages and other relief awarded.[191] "The Commission requested such a rule in [a] September 1987 letter" to the Securities Industry Conference on Arbitration (SICA).[192] Today, FINRA Rules 12904 and 13904 (Awards) provide that the award shall contain the damages and other relief awarded.

In addition, NASD, NYSE and AMEX amended their respective rules to impose specific disclosures and other requirements when using predispute arbitration clauses in customer agreements.[193] For example, the amendments prohibited the use of any language in a predispute arbitration clause in a customer agreement that limited the ability of arbitrators to make any award under the arbitration rules of an SRO and applicable law.[194] In the approval order, the Commission stated that predispute arbitration clauses in customer agreements "cannot be used to curtail any rights that a party may otherwise have had in a judicial forum" and "[i]f punitive damages . . . would be available under applicable law, then the agreement cannot limit parties' rights to request them, nor arbitrators' rights to award them."[195] Today, requirements when using predispute arbitration clauses in customer agreements are in Rule 2268. Rule 2268(d)(4) provides that no customer predispute arbitration agreement shall include any condition that limits the ability of arbitrators to make any award.

However, the award of punitive damages by arbitrators in NASD arbitration remained controversial. As a result, at its May 1994 meeting, the NASD Board approved issuing a *Notice to Members* soliciting comment on a report developed by the Subcommittee on Punitive Damages of the NASD Legal Advisory Board (Punitive Damages Subcommittee) that studied possible approaches for governing the award of punitive damages in NASD arbitration.[196] The Punitive Damages Subcommittee's report recommended that NASD limit punitive damages in arbitration and institute a series of procedures to guide arbitrators including, for example, that NASD require written decisions in all cases of punitive damages; institute a right to appeal an award of punitive damages; enhance arbitrator qualification, training and guidance; bifurcate proceedings for the determination on punitive damages; and place a cap on punitive damages awards. In publishing *Notice to Members 94-54*, NASD stated its "objective [was] to develop an approach toward the award of punitive damages that will be fair to all arbitration participants." The NASD Board believed the report "provide[d] a useful framework for discussing this controversial area." NASD "urge[d] commenters to consider the manner in which implementation of the individual recommendations would affect both claimants and respondents" and "welcome[d] any additional approaches that commenters believe[d] would help achieve a fair balance of the interests of arbitration participants." NASD also noted how the NAMC (then the National Arbitration Committee) had been studying the issue of punitive damages and independently considered several of the approaches discussed in the report. Simultaneously, the 1994 Task Force was considering whether punitive damages should be awarded in securities arbitration cases.[197]

In 1995, the Supreme Court addressed the availability of punitive damages in securities arbitration in a case involving NASD's arbitration forum.[198] In enforcing the award of punitive damages to the customer, the Court cited an NASD rule (the progenitor of Rule 12904[199]) providing that arbitrators may award "damages and other relief," and determined this language to be broad enough to include punitive damages.[200]

After the 1994 Task Force deliberation, NASD in 1997 filed with the SEC a proposed rule change to limit punitive damage awards to two times compensatory damages or $750,000, whichever was less.[201] This proposed rule change was related to a recommendation from the 1994 Task Force, which deemed treatment of punitive damages as "the most controversial and polarizing issue" considered by the task force.[202] NASD ultimately withdrew the proposed rule change in May 2003.[203]

In addition, NASD in 1998 filed with the SEC a proposed rule change to amend NASD's rule governing the use of predispute arbitration agreements with customers (then, NASD Rule 3110).[204] Originally, NASD proposed, among other things, that NASD Rule 3110(f)(1) require new disclosures that (1) no choice-of-law provision in an agreement may limit the availability of punitive damages obtainable under the rules of the arbitration forum and applicable state law, and (2) in some arbitration fora, punitive damages might be capped at the lesser of twice compensatory damages or $750,000, unless the parties agree to a greater amount. However, NASD amended the proposed rule change to delete these disclosures so that all rule provisions relating to punitive damages could be separately considered in the 1997 punitive damages filing (discussed above).

In approving the 1998 proposed rule change as amended, the Commission stated NASD Rule 3110(f)(4)(A)—providing that no predispute arbitration agreement shall include any condition that limits the ability of arbitrators to make any award—"achieves an appropriate balance between the interests of investors and the ability of parties to agree contractually to fair terms that would govern their disputes, especially as explained in NASD Notice to Members 95-85."[205] The Commission cited *Mastrobuono* and the Supreme Court's ruling "that the choice of law provision in the customer agreement before the Court did not have the effect of barring arbitrators from [awarding] punitive damages" and stated "Rule 3110(f)(4) explicitly forbids broker-dealers from using any term of an agreement to limit such relief."[206]

(ii) Awarding Punitive Damages Under FINRA Rules

As discussed above, Rules 12904 and 13904 provide that awards must contain "[t]he damages and other relief awarded."[207] In addition, although

FINRA rules do not expressly provide that arbitrators may award punitive damages, Rule 2268(d) provides that no customer predispute arbitration agreement shall include 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." Over the years, FINRA has also periodically reminded its members about requirements when using predispute arbitration agreements for customer accounts, including that such agreements cannot limit the ability of arbitrators to award punitive damages.[208]

Upon a party's request, arbitrators may consider punitive damages as a remedy if a respondent has engaged in serious misconduct that meets the standards for such an award. When asserting a claim for punitive damages, a party may put forth an argument that the governing law set forth in the parties' agreement provides for punitive damages. Conversely, if under the governing law set forth in the parties' agreement punitive damages are not available in court, a party may assert this as a defense in an arbitration proceeding to a claim for punitive damages. The arbitrators determine based on the parties' arguments whether, or to what extent, to accept a claim or defense relating to punitive damages.[209]

If punitive damages are awarded in a FINRA arbitration case, the arbitrators must clearly specify what portion of the award is intended as punitive damages and include the basis for awarding punitive damages.[210] If a panel needs additional information to determine the basis for awarding punitive damages, the panel should ask the parties to brief the issue to help determine whether both factual and legal bases exist for such an award.[211]

Punitive damages have been awarded in a very small percentage of cases in FINRA's arbitration forum. From March 1988 through December 2025, approximately 47,835 awards have been rendered in FINRA's arbitration forum.[212] Of the 47,835 awards issued in nearly 38 years, only 3 percent (or 1,324 awards) included an award of punitive damages.

Arbitration awards in FINRA's arbitration forum, including punitive damages awards, are considered final and binding.[213] The only avenue for challenging an adverse FINRA arbitration award is to file a timely motion in a court of competent jurisdiction to vacate, modify or correct the award. The grounds for appealing an arbitration award are narrow.[214]

In response to the rule modernization *Notices*, FINRA has received feedback that it should limit arbitrators' ability to award punitive damages given "FINRA arbitration lacks the necessary procedural safeguards for awarding

punitive damages."[215] FINRA also received feedback that it should "amend Rule 2268(d)(4) to permit parties to agree in their predispute arbitration agreements to preclude or limit punitive damages in FINRA arbitration, so long as it is allowed under applicable state law" or, alternatively, "FINRA should impose specific caps on punitive damages awards" by, for example, "requiring awards to be below a certain amount [or] tied to a multiple of any compensatory damages award."[216] Conversely, FINRA has received feedback that it should not limit punitive damages because "if customers are forced to bring their claims against the securities industry in arbitration, the arbitrators should be entitled to award any relief the customers would be entitled to if their claim was filed in court."[217]

Request for Comment

H.1. Should FINRA maintain the current framework that allows arbitrators to award punitive damages?

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

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?

H.4. Are there procedural safeguards—such as bifurcated hearings for liability and damages, enhanced standards for awarding punitive damages, or mandatory explained decisions[218] 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?

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.[219] 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?

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)?[220] What customer protection and fairness considerations should be part of evaluating these questions?

I. Explained Decisions in Awards

In FINRA's arbitration forum, an award must contain, among other things, a summary of the issues, the damages and other relief requested and awarded, and a statement of any other issues resolved.[221] All arbitration awards are made publicly available.[222]

FINRA rules provide that an award *may* contain a rationale underlying the award.[223] In other words, arbitrators are permitted to decide on their own (or upon the motion of a party) to write an explained decision. FINRA rules also provide that arbitrators *must* provide an explained decision at the parties' joint request.[224]

An explained decision is a fact-based award stating the general reasons for the arbitrators' decision.[225] Inclusion of legal authorities and damage calculations is not required.[226] Parties are required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date.[227] The chairperson of the panel writes the explained decision and receives an additional honorarium of $400.[228]

The requirement for arbitrators to provide an explained decision at the parties' joint request has been in FINRA rules since 2009.[229] When FINRA amended its rules in 2009, the rules provided that the arbitrators allocate the $400 cost for the explained decision (*i.e.*, the additional $400 honorarium that the chairperson received for writing the explained decision pursuant to the parties' joint request) to the parties.

The 2014 Task Force believed that expanding the use of explained decisions could increase transparency and confidence in the fairness of the system and recommended that FINRA require explained decisions unless any

party notifies FINRA, prior to the IPHC, that it does not want an explained decision.[230] As an alternative approach, and to remove a potential obstacle to parties requesting an explained decision, FINRA began waiving the $400 fee for an explained decision in January 2017 and, effective February 2018, FINRA amended its rules to eliminate the $400 fee for an explained decision.[231] Thus, FINRA pays the $400 honorarium to the chairperson without passing this cost on to the parties.

FINRA has received few requests for explained decisions. Since the explained decision amendments went into effect in 2009 until the end of 2016, parties made 40 joint requests for explained decisions (or an average of 5 joint requests per year).[232] Of the 40 requests, there were 32 explained decisions issued.[233] Since waiving the $400 fee in January 2017 through December 31, 2025, parties made 34 additional joint requests for explained decisions (or an average of 4 joint requests per year). Of the 34 requests, 15 explained decisions were issued. Explained decisions were requested but not issued because either the cases settled or the requests were withdrawn.

In response to the rule modernization *Notices*, FINRA has received feedback that reasonably detailed explained decisions should be mandatory in all FINRA arbitration cases.[234]

Request for Comment

I.1. Should FINRA require explained decisions in all, or certain categories of, arbitration cases? Would explained decisions increase transparency and improve the quality of decision-making and consistency among awards? What impact would explained decisions have on the finality of arbitration awards?

I.2. Should arbitrators be required to provide additional detail in explained decisions? If so, what information should be required?

I.3. If FINRA were to require explained decisions in all, or certain categories of, arbitration cases, what impact, if any, would there be on the efficiency of the program including case resolution timelines?

I.4. Would mandatory or expanded use of explained decisions impact arbitrator recruitment and retention, particularly among chairperson-eligible arbitrators? If so, would higher compensation make up for the additional workload?

I.5. FINRA currently provides guidance to arbitrators on writing explained decisions.[235] Should FINRA provide additional guidance or training? If so, what additional guidance or training would be most beneficial to arbitrators?

J. Arbitration Awards Online

When a panel issues its decision in an arbitration proceeding, that decision must be in the form of a written award that complies with the requirements of Rule 12904 or 13904. These rules mandate that all awards be made publicly available and must include, among other information, the names of the parties and, if any, their representatives, a summary of the issues, the damages and other relief requested and awarded, an allocation of any applicable fees, the names of the arbitrators, the relevant dates from the proceeding, the location of the hearings, and the signatures of the arbitrators.[236]

In 2007, FINRA launched the Arbitration Awards Online (AAO) database, which allows users to perform web-based searches for FINRA arbitration awards.[237] The AAO includes copies of all FINRA arbitration awards.[238] Making FINRA arbitration awards publicly available provides transparency into FINRA's arbitration process and provides a valuable resource to all parties in arbitrator selection.[239] Although Rules 12904 and 13904 require that all awards be made publicly available, no FINRA rules provide FINRA with the authority to remove awards from AAO or redact information from awards published on AAO.

In response to the rule modernization *Notices*, FINRA received feedback that it should make arbitration awards searchable as they are in legal research platforms, like LexisNexis or Westlaw, rather than just providing PDF postings.[240] Separately, FINRA has received feedback that it should amend its rules to allow it to remove awards from AAO, or redact information from awards published on AAO, such as when the information in the award has been expunged from the Central Registration Depository (CRD®)[241] pursuant to a court order or court confirmation of a FINRA arbitration award containing expungement relief.[242]

Request for Comment

J.1. Who currently uses AAO and for what purposes?

J.2. Should FINRA consider amending its rules so that FINRA could remove awards from AAO or redact information from awards published on AAO? If so, in what circumstances would it be appropriate for FINRA to remove awards from AAO or redact information from awards published on AAO? What impact would such removal of awards or redaction of information from awards have on transparency into FINRA's arbitration process and the utility of displaying awards to parties and users of AAO? What customer protection and fairness considerations should be part of evaluating these questions?

J.3. Currently, users can search AAO by arbitration case identification number, keyword, name, date of award (by date range), forum, document type, panel composition or a combination of search parameters. Awards can be viewed online, printed or downloaded as text-searchable PDF files. Are there ways in which FINRA could enhance the search capabilities of AAO to be more helpful to users?

K. Unpaid Awards

Customers who pursue civil remedies in court or claims in arbitration against investment professionals cannot always recover on their judgments or awards. Customers encounter this challenge across the fora in which they may pursue action—whether state or federal court, a dispute resolution forum administered by a regulator, a private arbitration forum or otherwise—and across the range of financial services they may use. Confirmed arbitration awards may be collected using judicial remedies like civil judgments. Nonetheless, when a customer is unable to recover on a judgment or award, the customer may be left without any redress for the harm suffered.

FINRA rules require prompt payment of arbitration awards.[243] FINRA suspends from membership (or association with a member) any member or associated person who fails to pay a final arbitration award, unless they have a defense to non-payment, such as that the award has been discharged in bankruptcy.[244] Most unpaid customer arbitration awards are rendered against firms or individuals whose FINRA registration has been terminated, suspended, cancelled or revoked, or who have been expelled from FINRA.[245] FINRA publishes a list of members and associated persons responsible for unpaid awards,[246] and makes this information available to customers through the member's or associated person's BrokerCheck® record. However, FINRA's suspension for non-payment of awards applies only to the activities under FINRA's jurisdiction and cannot prevent the person from continuing to work with retail customers in other parts of the financial services industry, such as by acting as an insurance broker or investment adviser.[247]

FINRA has been focused on this important issue for many years. In 2018, FINRA issued a Discussion Paper on customer recovery to encourage a continued dialogue about addressing the challenges of customer recovery across the financial services industry, including recovery in FINRA's arbitration forum.[248] FINRA has also focused on ways to strengthen its rules to reinforce payment of awards. For example, FINRA amended its Membership Application Program rules to create further incentives for the timely payment of awards.[249] FINRA also amended its rules to expand

a customer's options to withdraw an arbitration claim (or take certain other steps) if a member or associated person becomes inactive before a claim is filed or during a pending arbitration.[250] In addition, FINRA has taken steps to address members and associated persons with a significant history of misconduct, which may have important ancillary benefits for the payment of awards.[251]

Arbitration cases decided by award represent a small subset of all cases filed.[252] For example, there were 1,852 arbitration cases involving customer disputes that closed in 2024, but only 12 percent (232 cases) closed by award. Another 70 percent (1,302 cases) settled prior to award, 11 percent (195 cases) were withdrawn, and 7 percent (123 cases) closed by other means (*e.g.*, stipulated award, bankruptcy of critical party, uncured deficient claim, forum denied or stayed by court action). Of the 232 customer awards rendered in 2024, only 15 (1 percent of all cases) went unpaid.

Over the years, some have advocated that FINRA address unpaid awards by creating a national customer recovery pool and fund it with, for example, fine monies assessed against its members and associated persons or by assessments on its members.[253] Conversely, others have opposed this approach, stating "it is unfair to the broker-dealers who honor their arbitration award obligations, is essentially a tax on investors, and introduces numerous moral hazards."[254] FINRA has also received feedback that it should require all members to maintain sufficient liability insurance to address unpaid awards.[255] FINRA identified these and other approaches to unpaid awards in its Discussion Paper on customer recovery and discussed related issues and questions, such as whether the approaches would require SEC rulemaking or federal legislation, or present policy issues that should be considered by the SEC or Congress.[256] In addition, questions have been raised about the scope of FINRA's authority to create a national customer recovery pool, and why any such pool should apply only to unpaid awards in FINRA's arbitration forum when customers face unpaid judgments and awards regarding securities claims in other fora, such as in state or federal court or in private arbitration fora.

There are other considerations in evaluating potential approaches to unpaid awards, such as how any approach would interact with other existing regulatory regimes. For example, broker-dealer capital requirements have long been set by the SEC through its financial responsibility rules, which generally govern the capital and other customer protection requirements applicable to broker-dealers. Similarly, the Securities Investor Protection Corporation was created by Congress to protect customers' claims for securities entrusted to failed broker-dealers (or for cash entrusted to them

in connection with transactions in securities). And the federal bankruptcy process is designed to enable an honest debtor to obtain relief from legal action, while ensuring creditors are treated fairly and receive payment through an orderly, court-supervised liquidation of assets or repayment plan.

In response to the rule modernization *Notices*, FINRA also received feedback that it should require any individual or entity that owns or controls a FINRA member to submit to FINRA jurisdiction; mandate that holding companies and control persons participate in FINRA arbitration pursuant to Rule 12200 where they are alleged to have responsibility for customer harm; and prohibit associated persons, owners and control entities from remaining in the industry if they are affiliated with firms that fail to pay arbitration awards.[257]

Request for Comment

K.1. In its Discussion Paper on customer recovery,[258] FINRA identified potential approaches to enhancing the resources available to pay awards, including policy considerations these approaches raise and the need for Congressional and SEC involvement or action. How should these approaches be considered?

K.2. Are there any considerations not identified by FINRA in the Discussion Paper on customer recovery that should also be identified?

K.3. Are there other approaches that would enhance member resources to pay awards that FINRA should consider? What regulatory, legislative, or other steps would be required to implement those approaches?

L. Form U5 Defamation Claims

In response to the rule modernization *Notices*, FINRA has received feedback that it should address issues with the adjudication of Form U5 (Uniform Termination Notice for Securities Industry Registration) defamation claims.[259] This feedback said FINRA should provide guidance, training and instructions to arbitrators on the substantive elements of defamation claims.[260] This feedback also indicated that before making an award of monetary damages for Form U5 defamation claims, arbitrators should be required to find expressly that the alleged defamatory statement is a false statement of fact and was made in bad faith and with malice in fact.[261]

FINRA also received feedback that it should amend its rules to provide members with qualified or absolute immunity against Form U5 defamation claims.[262] With respect to customer dispute information, this feedback also said that FINRA should allow firms to request removal of demonstrably false

complaints from an associated person's Form U4, and FINRA should remove this information without a formal expungement proceeding.[263]

FINRA is mandated by federal statute to collect and maintain registration information about its members and their associated persons. To satisfy this statutory responsibility, FINRA operates CRD, the central licensing and registration system used by FINRA and its members, the SEC, other SROs and state securities regulators. The concept for CRD was developed by FINRA and NASAA, and NASAA and state securities regulators play a critical role in the ongoing development and implementation of CRD.

In general, the registration information in CRD is reported by members, associated persons and regulatory authorities in response to questions on the uniform registration forms.[264] These forms are used to collect registration information, which includes, among other things, administrative, regulatory, criminal history, financial and other information about associated persons. FINRA also makes much of the registration information reported to CRD publicly available through BrokerCheck.[265]

Forms U4 and U5 contain specific questions pertaining to the termination of a broker's employment with a securities firm[266] and certain customer dispute information.[267] Under FINRA rules, firms are required to file Form U5 no later than 30 days after terminating an associated person's registration.[268]

For allegedly untrue or misleading statements made on the Form U5, associated persons at times file claims in FINRA's arbitration forum seeking expungement of such information from their CRD records[269] or monetary damages under state law for defamation or wrongful termination or both. Similarly, associated persons at times file defamation claims with respect to allegedly untrue or misleading statements on the Form U4, which is required to be filed by registered persons upon the occurrence of certain events, but which in practice is often drafted by the member with which the individual is associated.[270]

If an associated person seeks expungement of Form U5 employment termination information in FINRA's arbitration forum and a panel explicitly states in the award that expungement relief is based on the defamatory nature of the information, FINRA will expunge the information from CRD without a court order confirming the award. If the panel does not explicitly state in the award that the expungement relief is because the information is defamatory in nature, the party seeking expungement must confirm the award in a court of competent jurisdiction before FINRA will remove the information from CRD.[271] Arbitrators are not required to state explicitly in the

award that they found all elements required to satisfy a claim in defamation under governing law have been met.[272] FINRA's guidance to arbitrators on defamation claims is in this expungement context.[273]

Request for Comment

L.1. How should the regulatory need for the reporting of complete and accurate information to CRD be balanced with concerns from members regarding adverse arbitration awards based on required reporting and associated persons' expectation for recourse if they believe the reported information is untrue or misleading?

L.2. Should FINRA amend its rules to require that before making an award of monetary damages for Form U5 defamation claims, arbitrators should be required to find that the alleged defamatory statement is a false statement of fact and was made in bad faith and with malice in fact? Is this the appropriate standard for damages claims based on allegations of defamation? Are there other standards FINRA should consider?

L.3. Should FINRA implement guidance, training or instructions to arbitrators on the substantive elements of defamation claims? If so, what form should such guidance, training or instructions take given concerns regarding FINRA maintaining neutrality as the administrator of the forum?

L.4. 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.[274] Should FINRA require that arbitrators considering Form U5 defamation claims have additional experience and qualifications? If so, what would be the appropriate additional experience and qualifications?

L.5. Should FINRA retain the long-standing position that it will expunge from CRD without a court order employment termination information if a panel explicitly states in the award that the basis for expungement is the defamatory nature of the information? Should FINRA apply a different standard to requests to expunge employment termination information?

L.6. Should FINRA and other regulators revisit the question of providing members with further immunity against Form U5 defamation claims? If FINRA and other regulators were to revisit such a proposal, what would a national, uniform standard look like and why? What regulatory authority would support such a standard?

M. General Request for Comment

FINRA requests comment on any of its rules, guidance (*i.e., Regulatory Notices*, FAQs, and other FINRA published materials) or processes that affect FINRA's arbitration forum and how they might be revised to enhance the transparency, impartiality and efficiency of FINRA's arbitration forum for all participants.[275] In particular, FINRA requests comment on the following questions:

M.1. Are there any other FINRA rules, guidance, operations or administrative processes that should be updated or amended that would help ensure that customers, members and their associated persons are treated fairly and support an efficient and transparent arbitration forum? If so, what has been your experience with these rules, guidance, operations or processes and what are your suggestions for improving them?

M.2. Where have FINRA rules related to arbitration been particularly effective or ineffective, and why? Are there areas where a revised approach might enhance the effectiveness and efficiency of the dispute resolution process while preserving customer protection?

M.3. What ambiguities in FINRA rules related to arbitration should FINRA address? Are there any other modifications to FINRA rules related to arbitration that should be considered to clarify their application?

M.4. Can FINRA make any of its administrative processes or interpretations related to the arbitration process more efficient and effective while protecting customers? If so, which ones and how? Are there any processes or interpretations that should be added?

M.5. Are there interdependencies among the topics identified in this *Notice* such that addressing certain concerns would reduce or eliminate the need to address others? For example, would enhanced arbitrator qualifications or training, or an arbitration appeals process, address concerns about punitive damages awards, explained decisions or case management efficiency? Please identify which issues you believe are most interdependent and explain how addressing one would impact the need to address the other(s).

M.6. Are there areas identified in this *Notice* that FINRA should prioritize when considering initial steps that may be most impactful?

M.7. Is there any additional data that FINRA could provide to help inform discussion around the issues presented in this *Notice*?

Conclusion

FINRA is committed to continuous improvement and has actively reviewed its regulatory requirements and processes to administer a fair and efficient arbitration forum. To this end, we request your feedback on how FINRA rules, guidance and processes should be modernized to enhance the transparency, impartiality and efficiency of FINRA's arbitration forum for all participants. FINRA looks forward to hearing from interested parties in response to this *Notice*.

Endnotes

1 *See generally* FINRA Forward (describing a series of initiatives—including modernizing FINRA rules—to improve FINRA's effectiveness and efficiency in pursuing its mission).

2 *See Regulatory Notice 25-04* (March 12, 2025); *Regulatory Notice 25-06* (March 20, 2025); *Regulatory Notice 25-07* (April 14, 2025).

3 Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters. FINRA also reserves the right to redact or edit personally identifiable information from comment submissions.

4 *See supra* note 2.

5 *See* letter from Andrew M. Greenidge, Epperson & Greenidge, P.A., to FINRA, dated May 8, 2025 (Epperson); letter from Adam J. Gana, President, Public Investors Advocate Bar Association (PIABA), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated June 11, 2025 (PIABA 1); letter from Roberto Braceras, General Counsel, Fidelity Management & Research Company LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated June 11, 2025 (Fidelity); letter from Bernard V. Canepa, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated June 11, 2025 (SIFMA 1); letter from Ken Norensberg, CEO, Luxor Financial Group, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated June 11, 2025; letter from GVC Capital LLC, to FINRA, dated June 11, 2025 (GVC); letter from Adam Gana, President, PIABA, to Jennifer Mitchell, Office of the Corporate Secretary, FINRA, dated June 18, 2025; letter from Randolph F. Pistor, Chief Legal Officer, Sigma Financial Corporation and Parkland Securities, LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 10, 2025 (Sigma and Parkland); letter from Adam J. Gana, President, PIABA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 14, 2025 (PIABA 2); letter from Leslie M. Van Buskirk, President, North American Securities Administrators Association, Inc. (NASAA), to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 14, 2025; letter from Anthony Rivera, Elissa Germaine and Christine Lazaro, Public Interest Fellow and Supervising Attorneys, St. John's University School of Law, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 14, 2025; letter from Michael Freedman and Nate Saint Victor, Executive Vice Presidents and Interim Co-Chief Legal Officers, LPL Financial Holdings, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 14, 2025 (LPL); letter from Bernard V. Canepa, Managing Director and Associate General Counsel, and Alyssa Pompei, Vice President and Assistant General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated July 14, 2025 (SIFMA 2).

In addition to their comments submitted in response to the rule modernization *Notices*, SIFMA submitted a letter to FINRA providing recommendations for improving

FINRA's arbitration forum, and PIABA submitted a letter to FINRA in response to SIFMA's recommendations. *See* letter from Alyssa Pompei, Vice President and Assistant General Counsel, and Kevin Carroll, Deputy General Counsel, SIFMA, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated July 11, 2025 (SIFMA 3); letter from Adam Gana, Michael Bixby and Joe Wojciechowski, President, Executive Vice President/President Elect and Vice President, PIABA, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated August 4, 2025 (PIABA 3).

6 *See* FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes).

7 *See* FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes). The Customer Code and Industry Code are referred to together as the Codes.

8 *See* Securities Exchange Act of 1934 (Exchange Act) Release No. 97294 (April 12, 2023), 88 FR 24282 (April 19, 2023) (Order Approving File No. SR-FINRA-2022-024); *see also Regulatory Notice 23-12* (August 11, 2023).

9 *See infra* Section II.K. Unpaid Awards.

10 *See* FINRA, Become an Arbitrator. FINRA is also recruiting more attorneys to serve as arbitrators. *See infra* Section II.C. Arbitrator Qualifications.

11 *See* FINRA, *The Neutral Corner*: Volume 3, 2025 5 (September 2025). FINRA staff is seeking approval from the FINRA Board of Governors (Board) to propose codifying the Short List Option as the default option when replacing arbitrators, which is responsive to feedback received from commenters.

12 The term "Director" means the Director of DRS. Unless FINRA rules provide that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. *See* FINRA Rules 12100(m) and 13100(m) (Definitions).

13 *See* Exchange Act Release No. 103753 (August 20, 2025), 90 FR 41449 (August 25, 2025) (Order Approving File No. SR-FINRA-2024-022); *see also Regulatory Notice 25-16* (November 18, 2025).

14 The NAMC is one of 12 FINRA advisory committees and makes recommendations to FINRA regarding recruitment, qualification, training and evaluation of arbitrators, and regarding rules, regulations and procedures that govern FINRA's arbitration forum. *See* FINRA Rules 12102 and 13102 (National Arbitration and Mediation Committee). *See also* FINRA, Advisory Committees.

15 *See infra* Section II.F. Discovery.

16 *See* FINRA Rules 12214 and 13214 (Payment of Arbitrators).

17 FINRA formed a dispute resolution task force in 2014 (2014 Task Force). *See* FINRA Dispute Resolution Task Force, *Final Report and Recommendations of the FINRA Dispute Resolution Task Force* (December 7, 2015) (2014 Task Force Report). The 2014 Task Force brought together a diverse group of leading customer advocates, academics, regulators and industry representatives to help ensure that FINRA's arbitration and mediation processes continued to serve the needs of the investing public. The 2014 Task Force worked independently, setting its own agendas and topics for consideration, and solicited input from a wide range of interested

persons and organizations. FINRA took action on all 51 recommendations made in the 2014 Task Force Report. *See* FINRA, *FINRA Dispute Resolution Task Force Recommendations Final Status Report* (January 15, 2019) (2014 Task Force Final Status Report).

FINRA's predecessor, the National Association of Securities Dealers (NASD), also formed a task force in 1994 to conduct a review of its arbitration forum (1994 Task Force). *See* NASD Dispute Resolution, *The Arbitration Policy Task Force Report — A Report Card* (July 27, 2007) (examining the major recommendations contained in the 1996 report of the 1994 Task Force and tracing the actions taken by NASD in response to those recommendations) (1994 Task Force Report Card); *see also Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors National Association of Securities Dealers, Inc.* (January 1996).

18 *See* Exchange Act Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* Exchange Act Section 19(b)(3) and Exchange Act Rule 19b-4.

19 In 1817, the New York Stock Exchange (NYSE) adopted its first Constitution, which provided that "[a]ll questions of dispute in the purchase or sale of Stocks shall be decided by a majority of the board . . ." NYSE Const. Rule 17 (March 8, 1817). *See also* Exchange Act Release No. 40479 (September 24, 1998), 63 FR 52782, 52783 (October 1, 1998) (Notice of Filing of File No. SR-NYSE-98-28) (stating NYSE "has had a general arbitration provision in its Constitution since 1817").

20 *See* letter from Joseph P. Kennedy, Chairman, SEC, to Richard Whitney, President, NYSE, dated March 21, 1935, at 5 (1935 SEC Letter).

21 *See* Exchange Act Release No. 13470 (April 26, 1977), 42 FR 23892, 23893 (May 11, 1977).

22 *See id.*

23 *See id.*

24 *See* Exchange Act Release No. 39487 (December 23, 1997), 63 FR 588, 590 (January 6, 1998) (Notice of Filing of File No. SR-NASD-97-44) (stating NASD's first code was adopted in 1968).

25 *Special Report to NASD Members* (December 1970) (stating NASD's arbitration program has been in effect since January 1969).

26 *See* Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (Order Approving File No. SR-NASD-2007-023).

27 *See id.* at 42181.

28 *See, e.g.*, Exchange Act Release No. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997) (Order Approving File No. SR-MSRB-97-04); Exchange Act Release No. 40517 (October 1, 1998), 63 FR 54177 (October 8, 1998) (Order Approving File No. SR-Phlx-98-28); Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998) (Order Approving File No. SR-Amex-98-32); Exchange Act Release No. 45094 (November 21, 2001), 66 FR 60230 (December 3, 2001) (Order Approving File No. SR-ISE-00-17). *See also* Exchange Act Release No. 56029 (July 9, 2007), 72 FR 38641 (July 13, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-038) (amending the NASD codes to clarify that the

term "member" includes any broker or dealer admitted to membership in an SRO that, with NASD consent, required its members to arbitrate pursuant to the NASD codes and to be treated as members of NASD for purposes of the NASD codes). Today, "member" is defined in Rules 12100(s) and 13100(q).

29 For a list of SROs that have entered into Regulatory Services Agreements with FINRA to provide its dispute resolution services, *see* the Other Exchanges Using FINRA's Forum page.

30 For information regarding FINRA's arbitration program, *see* the Arbitration & Mediation page.

31 *See, e.g.*, FINRA Rules 12212 and 13212 (Sanctions); FINRA Rules 12504 and 13504 (Motions to Dismiss); FINRA Rule 12506 (Document Production Lists); FINRA Rules 12511 and 13511 (Discovery Sanctions).

32 *See supra* note 18.

33 *See infra* Section I.E. The Federal Arbitration Act.

34 *See infra* note 214.

35 *See* FINRA, Dispute Resolution Services Statistics; *see also* FINRA, Expungement of Customer Dispute Information (providing statistics on expungement of customer dispute information in FINRA's arbitration forum).

36 Of the 10,393 arbitration cases that closed involving customer disputes, 10 percent (or 1,035 cases) were withdrawn, and 6 percent (or 582 cases) closed by other means (*e.g.*, stipulated award, bankruptcy of critical party, uncured deficient claim, forum denied or stayed by court action).

37 Of the 5,950 arbitration cases that closed involving intra-industry disputes, 9 percent (or 519 cases) were withdrawn, and 8 percent (or 503 cases) closed by other means (*e.g.*, stipulated award, bankruptcy of critical party, uncured deficient claim, forum denied or stayed by court action).

38 *See* FINRA, Arbitration Awards Online.

39 The term "panel" means the arbitration panel, whether it consists of one or more arbitrators. *See* Rules 12100(u) and 13100(s).

40 The Supreme Court has held that predispute arbitration agreements are enforceable as to claims brought under the Exchange Act. *See Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 238 (1987). Until the Supreme Court's decision in *McMahon*, the courts would not enforce predispute arbitration agreements relating to federal securities laws claims. In addition, until its rescission in 1987, SEC Rule 15c2-2(a) provided that: "It shall be a fraudulent, manipulative or deceptive act or practice for a broker or dealer to enter into an agreement with any public customer which purports to bind the customer to the arbitration of future disputes between them arising under the federal securities laws, or to have in effect such an agreement, pursuant to which it effects transactions with or for a customer." As a result of *McMahon* and the rescission of SEC Rule 15c2-2(a), firms can compel arbitration of customer claims through inclusion of predispute arbitration provisions in their customer agreements.

41 To help ensure that customers understand these predispute arbitration agreements, FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for

Customer Accounts) sets forth requirements that apply when firms use them. These requirements include that any predispute arbitration clause must be highlighted in the agreement and immediately preceded by disclosures that the agreement contains such a clause and that describe the consequences of agreeing to arbitration.

42 *See* FINRA Rule 12200 (Arbitration Under an Arbitration Agreement or the Rules of FINRA). It appears that from its earliest days, the requirement to arbitrate at the customer's request has been viewed as a customer protection right regarding their brokerage firms. *See* Jill Gross, *The Historical Basis of Securities Arbitration as an Investor Protection Mechanism*, 2016 J. Disp. Resol. 171, 176 (2016) ("Moreover, at least as early as 1831, records from the NYSE Board reveal that its Arbitration Committee resolved non-member/member disputes.") (citing Stuart Banner, Anglo-American Securities Regulation 272-73 (1998)). For example, as early as 1869, the NYSE, in its Constitution, expressly provided customers the right to demand arbitration of disputes with its members, even in the absence of a predispute arbitration agreement. *See* NYSE Const. art. III, § 7 (July 28, 1869) (establishing an Arbitration Committee to investigate and decide all claims and matters of difference arising between members of NYSE and claims against members by non-members (usually customers), when such non-members agree to NYSE's rules); NYSE By-Laws art. LII (July 28, 1869) ("Any person not a member of the Exchange shall have the right to bring a claim arising from any transaction against a member of said Exchange, before the Arbitration Committee. . ."). In 1935, the SEC recognized this right just after its own formation, when it gained regulatory authority over the exchanges. *See* 1935 SEC Letter, *supra* note 20. In a memorandum to NYSE, the Chairman of the SEC stated: "[t]he right to arbitration before the arbitration committee of the exchange is at present granted to any customer regardless of the contract between the member and the customer." *Id*. at 5. To address its concerns regarding the composition and neutrality of arbitration panels for those customer arbitrations, the SEC recommended to NYSE that it maintain this right for customers, and also provide an option for arbitration before independent arbitral tribunals rather than just before NYSE. *Id*. ("Since the customer can at any time prior to arbitration choose to seek his remedy in the courts, continued maintenance of this policy possesses no disadvantage, provided that the Exchange also encourages arbitration before independent arbitral tribunals as an additional remedy available to customers."). Since 1972, NASD included this right in its arbitration rules, and it was eventually incorporated into current Rule 12200. *See* NASD, NASD 72 Condensed Version: Chairman's Report 18 (1972); 38 SEC Ann. Rep. § 3, at 53 (1972).

43 *See* Rule 2268; FINRA Rule 12204 (Class Action Claims).

44 *See* 9 U.S.C. § 1 *et seq*.

45 Disputes involving the insurance business activities of a member that is also an insurance company are not required to be arbitrated under the Customer Code. *See* Rule 12200.

46 For additional information on the history and use of predispute arbitration agreements with customers, *see supra* Section I.D. Predispute Arbitration Agreements.

47 2014 Task Force Report, *supra* note 17, at 49.

48 *See Regulatory Notice 16-25* (July 22, 2016).

49 *See Goldman, Sachs & Co. v. Golden Empire Schs. Fin. Auth.*, 764 F.3d 210, 212 (2d Cir. 2014) (holding that a forum selection clause requiring "all actions and proceedings" to be brought in federal court supersedes the agreement under Rule 12200 to arbitrate with customers); *Goldman, Sachs & Co. v. City of Reno,* 747 F.3d 733, 746 (9th Cir. 2014) (majority holding that the forum selection clauses in broker-dealer agreements between the parties superseded the "default obligation" to arbitrate under FINRA rules and that by agreeing to these clauses, the customer disclaimed any right it might otherwise have had to FINRA's arbitration forum).

50 *See UBS Fin. Servs., Inc. v. Carilion Clinic,* 706 F.3d 319, 330 (4th Cir. 2013) (holding that a forum selection clause requiring "all actions and proceedings" to be brought in federal court did not provide sufficient notice to customers to supersede the agreement under Rule 12200 to arbitrate with customers).

In its 2015 report, the 2014 Task Force noted "there is a split among the federal appeals courts on whether forum selection clauses that choose litigation in federal courts trump a customer's right to arbitration under FINRA Rule 12200" (citing the *Golden Empire*, *City of Reno* and *Carilion Clinic* decisions). 2014 Task Force Report, *supra* note 17, at 49. "Some members of the task force [took] the view that sophisticated investors should be free to negotiate around FINRA Rule 12200; others believe[d] that a waiver of the customers' right to arbitrate violates § 29(a) of the Exchange Act." *Id.*

51 *See Carilion Clinic*, 706 F.3d at 328.

52 *See Reading Health Sys. v. Bear Stearns & Co.*, 900 F.3d 87 (3d Cir. 2018).

53 *See id.* at 101-104.

54 *See id.* at 103 (citing *Patten Sec. Corp. v. Diamond Greyhound & Genetics, Inc.*, 819 F.2d 400, 406-07 (3d Cir. 1987) (holding that a broker-dealer agreement containing a provision in which the parties consented to the jurisdiction of the New Jersey courts did not implicitly waive the customer's right to arbitration under NASD's compulsory arbitration rule (*i.e.*, the progenitor of Rule 12200) because the forum selection clause was silent as to the issue of arbitration)).

55 *See id.* Further, the Third Circuit stated that "[b]y condoning an implicit waiver of [the customer's] regulatory right to arbitrate, [it] would erode investors' ability to use an efficient and cost-effective means of resolving allegations of misconduct in the brokerage industry and thus undermine FINRA's ability to regulate, oversee, and remedy any such misconduct." *See id.* (citing *Regulatory Notice 16-25*).

56 *See* SIFMA 3, *supra* note 5, at 3.

57 *See* PIABA 3, *supra* note 5, at 3 (stating "[t]he size of an investor's claim often reflects nothing more than the size of their loss and the strength of the claim, not the merit or complexity of their case").

58 *See id.* (urging "FINRA to adopt rules that allow investors to choose between FINRA and court" as this "would align with FINRA's investor protection mission and offer the critical option of seeking justice before a jury of peers").

59 For example, on May 1, 1995, NASD initiated a one-year pilot program for arbitrating large and complex cases, at the time defined as cases involving damages of at least $1 million. Beyond a mandatory administrative conference with an NASD staff person to develop a hearing plan, an arbitration proceeded under the rules for large and complex cases only by the consent of all parties. The rules for large and complex cases generally allowed the parties, NASD staff and arbitrators to customize the arbitration procedures. To defray administrative costs, NASD charged higher fees. The pilot program expired on December 31, 2000. *See* Notice to Members 01-03 (January 10, 2001). Few parties—only 43 of the first 880 eligible cases—elected to proceed under the rules for large and complex cases. *See* 1994 Task Force Report Card, *supra* note 17, at 20; 2014 Task Force Report, *supra* note 17, at 30.

On July 2, 2012, FINRA launched a voluntary program for large cases targeted at cases involving damages claims of at least $10 million. *See* FINRA, *The Neutral Corner*: Volume 3 – 2012 6-7 (September 2012). To participate in the program, all parties had to agree, pay for any additional costs of the program, and be represented by counsel. The program allowed the parties to have more control over the administration of their case. The parties could customize the process by, for example, having additional control over the method of arbitrator appointment and the qualifications of arbitrators, hire non-FINRA arbitrators for their case, develop their own procedures for exchanging information prior to the hearing, have expanded discovery options such as depositions and interrogatories, and choose from a wider selection of facilities. FINRA also assigned to these cases a specially trained and experienced case administrator, who assisted the parties in developing a detailed plan for the administration of the case. Under the pilot, FINRA had a total of 12 cases opt into the program, nine of which were decided by award. The pilot ended in 2021.

60 For example, FINRA has a "special arbitrator roster" that considers requests to expunge customer dispute information under FINRA Rule 13805 (Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System). In addition to being classified as a public arbitrator and eligible for the chairperson roster, the arbitrator must have: (1) evidenced successful completion of, and agreement with, enhanced expungement training provided by FINRA and (2) served as an arbitrator through award on at least four customer-initiated arbitrations administered by FINRA or another SRO in which a hearing was held, except a hearing held pursuant to FINRA Rule 12800(c)(3)(B) (Simplified Arbitration). *See* FINRA Rule 13806(b) (Panel to Decide Requests for Expungement of Customer Dispute Information Filed by an Associated Person under Rule 13805). *See also infra* note 119 and accompanying text (describing chairperson qualifications).

For arbitrations involving a sexual assault, sexual harassment or statutory employment discrimination claim, the chairperson (for panels consisting of three arbitrators) or single arbitrator (for panels consisting of one arbitrator) must have the following qualifications: (1) law degree; (2) membership in the bar of any jurisdiction; (3) substantial familiarity with employment law; and (4) 10 or more years of legal experience, of which

at least five years must be in either law practice; law school teaching; government enforcement of equal employment opportunity statutes; experience as a judge, arbitrator, or mediator; or experience as an equal employment opportunity officer or in-house counsel of a corporation. *See* FINRA Rule 13802(c) (Sexual Assault Claims, Sexual Harassment Claims, or Statutory Employment Discrimination Claims).

For hearings on a request for permanent injunctive relief, when parties select a panel of three arbitrators, a portion, but not a majority, of the list of potential arbitrators are required to be lawyers with experience litigating cases involving injunctive relief. In addition, if the parties do not timely agree on a chairperson, the Director will, whenever possible, select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest. *See* FINRA Rule 13804 (Temporary Injunctive Orders; Requests for Permanent Injunctive Relief).

61 Disputes arising out of the insurance business activities of a member that is also an insurance company are not required to be arbitrated under the Industry Code. *See* Rule 13200(b). In addition, claims alleging employment discrimination in violation of a statute, disputes arising under a whistleblower statute that prohibits the use of predispute arbitration agreements, and sexual assault and sexual harassment claims are not required to be arbitrated under the Industry Code. *See* FINRA Rule 13201 (Statutory Employment Discrimination Claims, Disputes Arising Under a Whistleblower Statute that Prohibits the Use of Predispute Arbitration Agreements, Sexual Assault Claims, and Sexual Harassment Claims).

62 Specifically, the Individual/Applicant's Acknowledgement and Consent section in the Form U4 provides: "I agree to arbitrate any dispute, claim or controversy that may arise between me and my *firm*, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the *SROs* indicated in Section 4 (SRO REGISTRATION) as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent *jurisdiction*." Uniform Application for Securities Industry Registration or Transfer, Form U4, § 15A, Item 5 (rev. May 2009). *See also* FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4).

63 *See* SIFMA 3, *supra* note 5, at 3-4.

64 *See* PIABA 3, *supra* note 5, at 3 (stating "PIABA strongly opposes any attempt to remove intra-industry cases from the FINRA forum").

65 *See* 63 FR 588, *supra* note 24, at 590.

66 *See id.*; 17 C.F.R. § 240.17a-4(a).

67 *See* 1994 Task Force Report Card, *supra* note 17, at 16-17. The purpose and the application of the eligibility rule was also debated by the 2014 Task Force. However, the 2014 Task Force reached no consensus and thus made no recommendation. *See* 2014 Task Force Report, *supra* note 17, at 39-40.

68 *See* 63 FR 588, *supra* note 24, at 591-92 (describing the 1994 Task Force recommendations and resulting opposition from customers and members).

69 *See id.* at 592 (describing the proposed rule change).

70 *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002).

71 *Id.* at 85.

72 *See* Exchange Act Release No. 50714 (November 22, 2004), 69 FR 69971 (December 1, 2004) (Order Approving File No. SR-NASD-2003-101); *see also Notice to Members 05-10* (January 31, 2005). Arbitrators may decide eligibility issues in response to a party's motion, or on their own. *See Horst v. FINRA*, No. A-18-777960-C (Dist. Ct. Nev. Oct. 25, 2018) (Order Denying Motion to Vacate Arbitration Award) (ruling that an arbitrator may raise *sua sponte* the eligibility issue, not only when a party to the arbitration raises it in a motion).

73 *See* Rules 12206(a) and 13206(a).

74 *See* Rules 12206(c) and 13206(c).

75 *See id.*

76 *See* Rules 12206(d) and 13206(d).

77 *See* Rules 12206(a) and 13206(a). In addition, FINRA Rules 12409 and 13413 (Jurisdiction of Panel and Authority to Interpret the Code) provide that the arbitrators have the authority to interpret and determine the applicability of all provisions under the Codes. Thus, the decision of whether to dismiss a claim pursuant to Rule 12206 or 13206 is within the sole discretion of the panel.

78 By filing a motion to dismiss under Rule 12206 or 13206, a moving party is agreeing that if the panel dismisses the claim, then the non-moving party may withdraw any remaining related claims without prejudice and pursue their claims in court. *See* Rules 12206(b) and 13206(b).

79 *See Regulatory Notice 21-16* (April 21, 2021).

80 *Id*. at 3.

81 *Id.*

82 *Id.*

83 FINRA Dispute Resolution Services, Basic Arbitrator Training Program Transcript 30 (January 2026). The transcript also states that a full panel must resolve any questions regarding a claim's eligibility; the panel should review the parties' submissions, pleadings, and arguments, and give parties an opportunity to conduct discovery, if requested; and the panel should ask the parties to brief issues when the panel has additional questions on eligibility. *See id.*

Similar instructions appear in FINRA's Arbitrator's Guide. *See* FINRA Dispute Resolution Services Arbitrator's Guide 48 (December 2025) (Arbitrator's Guide).

84 *See* Basic Arbitrator Training Program Transcript, *supra* note 83, at 30. *See also* Arbitrator's Guide, *supra* note 83, at 48.

85 *See* Basic Arbitrator Training Program Transcript, *supra* note 83, at 31.

86 *See id.*

87 *See* PIABA 3, *supra* note 5, at 5.

88 *See* GVC, *supra* note 5, at 3.

89 *See id.* (attaching a letter dated July 26, 2021, from Kent Lund, Interim CEO, GVC Capital LLC to FINRA regarding FINRA's eligibility rule).

90 *See* Rules 12504(b) and 13504(b).

91 *See* Rules 12504(a)(1) and 13504(a)(1).

92 *See* Rules 12504(a)(2) and 13504(a)(2).

93 *See* Rules 12504(a)(4) and 13504(a)(4).

94 *See* Rules 12504(a)(5) and 13504(a)(5).

95 *See* Rules 12504(a)(7) and 13504(a)(7).

96 *See* Rules 12504(a)(8) and 13504(a)(8).

97 *See* Rules 12504(a)(9) and 13504(a)(9).

98 *See* Rules 12504(a)(10) and 13504(a)(10).

99 *See* Rules 12504(a)(11) and 13504(a)(11).

100 *See* Rules 12504(a)(6) and 13504(a)(6). In addition, as discussed above in Section II.B.(i)., Rules 12206 and 13206 specify procedures that govern motions to dismiss based on eligibility.

101 *See* Exchange Act Release No. 59189 (December 31, 2008), 74 FR 731 (January 7, 2009) (Order Approving File No. SR-FINRA-2007-021); *see also Regulatory Notice 09-07* (January 23, 2009).

102 *See* 2014 Task Force Report, *supra* note 17, at 37-38.

103 *See id.* at 38.

104 *See id.*

105 *See* Exchange Act Release No. 79285 (November 10, 2016), 81 FR 81213 (November 17, 2016) (Order Approving File No. SR-FINRA-2016-030); *see also Regulatory Notice 17-02* (January 3, 2017).

106 *See* Fidelity, *supra* note 5, at 4 (proposing clearing firms be allowed to file prehearing motions to dismiss based on their limited back-office role).

107 *See* SIFMA 3, *supra* note 5, at 7 (recommending "that FINRA amend its rules to allow parties to file a motion to dismiss prior to filing an answer" and "that FINRA toll the answer deadline until the motion to dismiss deadline has been resolved").

108 *See* PIABA 3, *supra* note 5, at 4-5 (stating "PIABA strongly opposes SIFMA's proposal to expand the grounds for motions to dismiss" as it "would likely add months of time . . . and result in additional costs").

109 Arbitrators are independent contractors and are not employees of FINRA. As the neutral administrator of the arbitration forum, FINRA does not participate in the decision-making process by arbitrators. *See* Become an Arbitrator, *supra* note 10.

110 *See id*.

111 *See id.* (stating previous legal experience is not required, but individuals with legal backgrounds are encouraged to apply). Arbitrators are eligible to serve as chairperson of a panel if they meet certain qualifications including having a law degree and being a member of a bar of at least one jurisdiction. *See infra* note 119 and accompanying text (describing chairperson qualifications). In addition, for some types of arbitration cases, arbitrators must meet additional qualifications, including having a law degree. *See supra* note 60.

112 Internships or short-term work while enrolled as a full-time student do not count towards the employment criteria. *See* Become an Arbitrator, *supra* note 10.

113 *See* FINRA, Arbitrator Ethics (outlining the criteria under which FINRA will temporarily or permanently decline new applicants from service on FINRA's arbitrator roster).

114 *See* SIFMA 1, *supra* note 5, at 1 (recommending that FINRA enhance arbitrator training and qualifications);

SIFMA 3, *supra* note 5, at 9 (commending the new employment and educational qualifications for arbitrators and "urg[ing] FINRA to consider additional steps to increase the number of arbitrators with process and subject matter expertise"). *Contra* PIABA 3, *supra* note 5, at 7 (stating "PIABA opposes the request to require arbitrators to have additional subject matter expertise").

115 PIABA 1, *supra* note 5, at 11; *see also* PIABA 3, *supra* note 5, at 3 (stating the new arbitrator qualifications "diminish the diversity of perspectives" and now customers "are less likely to have their disputes heard by peers").

116 *See* FINRA Rules 12400(b) and 13400(b) (List Selection Algorithm and Arbitrator Rosters).

117 *See* Rules 12100(t) and 13100(r).

118 *See* Rules 12100(aa) and 13100(x).

119 *See* Rules 12400(c) and 13400(c).

120 *See* Rules 12400(a) and 13400(a).

121 The panel will consist of three arbitrators in customer disputes when (1) the amount of the claim is more than $50,000 but not more than $100,000, exclusive of interest and expenses, and the parties agree in writing to three arbitrators; or (2) the amount of the claim is more than $100,000, exclusive of interest and expenses, is unspecified, or the claim does not request money damages, unless the parties agree in writing to one arbitrator. *See* FINRA Rule 12401 (Number of Arbitrators).

122 *See* FINRA Rule 12403(a)(1) (Cases with Three Arbitrators). To better balance the process for generating public lists, FINRA recently amended its rules to provide that, when generating a public list in cases with three arbitrators, public arbitrators who are not chairperson-qualified will have two chances for selection. *See supra* note 13.

123 The list selection algorithm will automatically exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm. *See* Rule 12403(a)(4). In addition, FINRA conducts a review for other conflicts not identified within the list selection algorithm. *See* Rule 12403(a)(5). If any arbitrators are removed due to such conflicts, the list selection algorithm is used to generate replacement arbitrators. *See id.*

124 *See* Rule 12403(b).

125 *See* Rule 12403(c)(2)(A).

126 *See* Rule 12403(c)(1)(A).

127 To address the perception that FINRA's mandatory inclusion of a non-public arbitrator on a panel is not fair to customers, in 2008, FINRA commenced a 27-month pilot program with 14 firms that offered customers the option of an all-public panel. FINRA received feedback from pilot participants indicating that customer representatives strongly supported the right of customers to decide whether to exclude any non-public arbitrator. Thus, in 2011, FINRA amended Rule 12403 to allow customers to choose between two panel selection options: the majority-public panel, which retained the existing panel composition method, or the optional all-public panel, which allowed any party to select an all-public panel. *See* Exchange Act Release No. 63799 (January 31, 2011), 76 FR 6500 (February 4, 2011) (Order Approving File No. SR-FINRA-2010-053);

see also Regulatory Notice 11-05 (February 1, 2011). In the two years following implementation of the optional all-public panel method, customers chose the all-public panel in approximately three-quarters of eligible cases. Further, customers using the majority-public panel option did so by default 77 percent of the time rather than by making an affirmative choice. Thus, in 2013, FINRA amended Rule 12403 so that customers were no longer required to elect a panel selection method and parties in all customer cases with three arbitrators could select an all-public panel by striking all non-public arbitrators from that list. *See* Exchange Act Release No. 70442 (September 18, 2013), 78 FR 58580 (September 24, 2013) (Order Approving File No. SR-FINRA-2013-023); *see also* Regulatory Notice 13-30 (September 23, 2013).

The 2014 Task Force determined that it would not reconsider the ability of parties in customer cases with three arbitrators to select an all-public panel. *See* 2014 Task Force Report, *supra* note 17, at 12 (stating "[t]his issue has been extensively debated, and the task force received no new information that would warrant reopening the discussion"). However, the 2014 Task Force did recommend that in instances where parties collectively strike all the non-public arbitrators, FINRA should provide a new list of 10 public arbitrators to fill the third public arbitrator seat. *See id.* To address this recommendation without delaying the arbitrator selection process, FINRA increased the number of arbitrators on the public list sent to parties from 10 to 15 (and proportionally increased the number of strikes to the public list from four to six). *See* Exchange Act Release No. 78836 (September 14, 2016), 81 FR 64564 (September 20, 2016) (Order Approving File No. SR-FINRA-2016-022); *see also* Regulatory Notice 16-44 (December 1, 2016).

128 Additional statistics are available on the Dispute Resolution Services Statistics web page.

129 *See* PIABA 3, *supra* note 5, at 7 (stating "PIABA supports reclassifying certain non-public arbitrators—such as PIABA members with no financial or business ties to the securities industry—as public arbitrators" to "expand the qualified public pool without compromising fairness"). *See also* SIFMA 3, *supra* note 5, at 10 (stating "FINRA's definition of public arbitrator excludes a wide range of professionals, including many that have only attenuated connections to the industry" which "has the effect of eliminating many highly qualified individuals with subject matter expertise from the pool of public arbitrators").

130 *See* SIFMA 3, *supra* note 5, at 10. *Contra* PIABA 3, *supra* note 5, at 7 (stating "PIABA opposes the request . . . that FINRA consider requiring customers to submit their dispute to members of the industry").

131 *See* Epperson, *supra* note 5.

132 *See* FINRA, Arbitrator Training.

133 *See* Rules 12400(c) and 13400(c).

134 *See* Rules 12800(b), 13805 and 13806.

135 New arbitrator orientations are conducted via webinar approximately twice every month and are available to individuals in any hearing location. *See* Arbitrator Training, *supra* note 132.

136 *Id*.

137 *See* Arbitrator's Guide, *supra* note 83. *See also* FINRA, Rules & Case Resources (providing arbitrators with access to resources such as hearing scripts, templates and forms).

138 *See* FINRA, Neutral Workshop Audio and Video Files; FINRA, The Neutral Corner.

139 *See* FINRA, Dispute Resolution Subscriptions (noting subscribers can update information or unsubscribe from the Dispute Resolution Email Updates service at any time).

140 Arbitrators must follow FINRA rules and the ethical standards in the ABA Code of Ethics for Arbitrators in Commercial Disputes, which requires arbitrators to conduct proceedings with fairness and integrity. Arbitrators are not required to follow state or federal rules of evidence. *See* FINRA Rules 12604 and 13604 (Evidence).

141 *See* SIFMA 1, *supra* note 5, at 1 (recommending that FINRA enhance arbitrator training); SIFMA 3, *supra* note 5, at 9 (recommending FINRA implement required training with a testing mechanism on topics such as the arbitration process, FINRA's Discovery Guide, hearing oversight, the securities industry, substantive elements of law and arbitrators' obligation to maintain neutrality).

142 *See* PIABA 3, *supra* note 5, at 7.

143 *See supra* note 14 and accompanying text.

144 *See* SIFMA 3, *supra* note 5, at 7 (stating FINRA should require "meet and confers at the outset of a case to discuss discovery issues"). *See also* SIFMA 1, *supra* note 5, at 1 (recommending that FINRA improve the discovery process).

145 *See* SIFMA 3, *supra* note 5, at 7 (stating "FINRA's arbitration rules and guidance have not been updated to adequately address modern e-discovery challenges").

146 *See* PIABA 1, *supra* note 5, at 4-5; PIABA 2, *supra* note 5, at 8; PIABA 3, *supra* note 5, at 6 (stating FINRA should address "discovery abuses, frivolous objections, and delays in producing relevant documents").

147 *See* SIFMA 3, *supra* note 5, at 7.

148 *See* PIABA 3, *supra* note 5, at 6 (stating "FINRA should reject SIFMA's proposal to . . . divert discovery disputes to a special master removed from the oversight of arbitrators who will be most familiar with the particularities of each investor's claims").

149 *See* SIFMA 3, *supra* note 5, at 7.

Currently, the script available to arbitrators as a guide for the Initial Prehearing Conference (IPHC) prompts the arbitrators to ask the parties if they would like to stipulate to any deadlines or cutoff dates with respect to filing and responding to discovery requests. In addition, the script prompts arbitrators to ask the parties if they agree to a cutoff date (absent extraordinary circumstances) for serving subpoenas and arbitrator orders on non-parties. The chairperson records the agreements reached during the IPHC in an order. *See* FINRA, Initial Prehearing Conference Script for Single Arbitrator Cases (June 28, 2025); FINRA, Initial Prehearing Conference Script for Panel Cases (June 28, 2025). If the parties agree to forgo the IPHC, they must jointly provide written notice to the Director including, among other things, a discovery schedule and list of anticipated motions with filing and response due dates. *See* FINRA Rules 12500(c) and 13500(c) (Initial Prehearing Conference).

150 *See* PIABA 3, *supra* note 5, at 6 (stating "FINRA should reject SIFMA's proposal to limit discovery").

151 *See* PIABA 1, *supra* note 5, at 7-8.

The 2014 Task Force recommended that FINRA revise Document Production List 1 (the documents that members and associated persons produce) to require production of all insurance policies that may be applicable to claimants' claims. *See* 2014 Task Force Report, *supra* note 17, at 41-42. In 2018, FINRA published a request for comment on proposed amendments to Document Production List 1 to require firms and associated persons, upon request, to produce documents concerning third-party insurance coverage in customer arbitrations. *See Regulatory Notice 18-22* (July 26, 2018). FINRA received 112 comment letters, primarily from small firms and customer counsel. Thirty-one of the comment letters, including one letter submitted by 77 small firms, opposed the proposal. Seventy-two of the comment letters were from customer counsel, of which 26 were substantially similar letters from PIABA members.

152 *See* FINRA Rules 12505 and 13505 (Cooperation of Parties in Discovery). Failure to cooperate may result in sanctions. *See* Rules 12511 and 13511. To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. *See* FINRA Rules 12512 and 13512 (Subpoenas).

153 The 1994 Task Force recommended, among other things, that parties be required to produce essential documents early in the arbitration process without awaiting a request and that NASD provide better guidance to arbitrators on the proper scope and management of discovery. *See* 1994 Task Force Report Card, *supra* note 17, at 11. In response, in 1999, NASD provided its first Discovery Guide consisting of introductory and instructional text and 14 Document Production Lists. The Discovery Guide was intended for use in customer arbitrations only and established guidelines for discovery rather than mandatory procedures. *See* Exchange Act Release No. 41833 (September 2, 1999), 64 FR 49256 (September 10, 1999) (Order Approving File. No. SR-NASD-99-07); *see also Notice to Members 99-90* (October 25, 1999).

In 2007, NASD codified the discovery procedures outlined in the 1999 Discovery Guide, with some changes. The Customer Code was not amended to contain the Document Production Lists, which remained in the Discovery Guide, but made clear that parties must either produce documents on applicable lists or requested by parties, or respond with an objection. *See* Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (Order Approving File Nos. SR-NASD-2003-158 and SR-NASD-2004-011); *see also Notice to Members 07-07* (February 15, 2007).

In 2011, FINRA revised the Discovery Guide to expand the guidance to parties and arbitrators on the discovery process and consolidate the Document Production Lists into two lists of presumptively discoverable documents—one for firms and associated persons to produce and one for customers to produce. *See* Exchange Act Release No. 64166 (April 1, 2011), 76 FR 19155 (April 6, 2011) (Order Approving File No. SR-FINRA-2010-035); *see also Regulatory Notice 11-17* (April 15, 2011).

In 2013, FINRA revised the Discovery Guide to provide arbitrators with guidance on resolving electronic discovery (e-discovery) disputes; explain how product cases differ from other customer cases and describe the types of documents that parties typically request in product cases; and clarify the circumstances under which a party may request an affirmation when an opposing party does not produce documents specified in the Discovery Guide. *See* Exchange Act Release No. 70419 (September 16, 2013), 78 FR 57916 (September 20, 2013) (Order Approving File No. SR-FINRA-2013-024); *see also Regulatory Notice 13-40* (November 15, 2013).

The current and previous Discovery Guides as of 2007 are available on the Discovery Guide page.

154 Simplified customer arbitrations are arbitrations in which the dispute between a customer and member or associated person involves $50,000 or less, exclusive of interest and expenses. The Document Production Lists apply to arbitrations in which the customer requests an Option One hearing (*i.e.*, a regular hearing). The Document Production Lists do not apply to arbitrations in which the customer requests no hearing (*i.e.*, paper cases), or to arbitrations in which the customer requests an Option Two special proceeding (*i.e.*, an expedited, simplified hearing), unless the customer requests that the Document Production Lists apply to all parties when initiating an arbitration or, if the customer is a respondent, no later than the answer due date, regardless of the parties' agreement to extend any answer due date. *See* Rule 12800.

155 *See* FINRA, Discovery Guide (2013) (for claims filed on or after December 2, 2013).

156 Parties must either (1) produce to all other parties all documents in their possession or control that are described in the Document Production Lists; (2) identify and explain the reason that specific documents described in the Document Production Lists cannot be produced within the required time, and state when the documents will be produced; or (3) object as provided in FINRA Rule 12508 (Objecting to Discovery; Waiver of Objection). *See* Rule 12506(b)(1).

FINRA recently amended its rules to accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition, effective March 30, 2026. For these accelerated proceedings, parties must respond to the Document Production Lists within 35 (instead of 60) days of the answer due date, unless the parties agree otherwise. *See* FINRA Rule 12808 (Accelerated Processing). *See also* Exchange Act Release No. 103755 (August 21, 2025), 90 FR 41603 (August 26, 2025) (Order Approving File No. SR-FINRA-2024-021); *Regulatory Notice 25-18* (December 9, 2025).

157 *See* Rule 12506(b)(2).

158 *See* FINRA Rule 12507 (Other Discovery Requests).

159 *See id.*; FINRA Rule 13506 (Discovery Requests).

160 *See* Rules 12507(a)(1) and 13506(a).

161 *See* Rules 12507(a)(2) and 13506(b).

162 *See* Rules 12507(a)(1) and 13506(a).

163 *See* FINRA Rules 12510 and 13510 (Depositions) (providing that, upon motion of a party, the panel may permit depositions under limited circumstances).

164 *See* Rules 12507 and 13506.

165 The party receiving the request must either (1) produce the requested documents or information to all other parties; (2) identify and explain the reason that specific documents or information cannot be produced within the required time, and state when the documents will be produced; or (3) object. *See* Rule 12507(b)(1); FINRA Rule 13507(a) (Responding to Discovery Requests).

For accelerated proceedings, FINRA rules provide that parties must respond to discovery requests within 30 (instead of 60) days from the date a discovery request is received, unless the parties agree otherwise. *See* FINRA Rules 12808 and 13808 (Accelerated Processing). *See also* 90 FR 41603, *supra* note 156; *Regulatory Notice 25-18*, *supra* note 156.

166 *See* Rules 12507(b)(2) and 13507(b).

167 *See* Rule 12508; FINRA Rule 13508 (Objecting to Discovery Requests; Waiver of Objection).

168 *See* FINRA Rules 12509(a) and 13509(a) (Motions to Compel Discovery).

169 *See* Rules 12509(b) and 13509(b).

170 For additional information about arbitrator training and resources (*e.g.*, Neutral Workshops, *The Neutral Corner* and the Arbitrator's Guide), *see supra* Section II.E. Arbitrator Training.

171 *See* Basic Arbitrator Training Program Transcript, *supra* note 83, at 20.

172 *See* Rules 12400(c) and 13400(c).

173 *See* FINRA Dispute Resolution Services, Chairperson Training Transcript (May 2024).

174 *See*, Arbitrator Training *supra* note 132 (providing information about the Discovery, Abuses and Sanctions training).

175 *See* FINRA, Discovery; FINRA Dispute Resolution Services, Party's Reference Guide (December 2025); FINRA, FINRA's Arbitration Process.

176 *See* SIFMA 3, *supra* note 5, at 8. *Contra* PIABA 3, *supra* note 5, at 6 (stating that creating a central contact point "would almost certainly result in greater inefficiency" and "arbitrators have the ability to manage the unique needs of each individual case and should be most familiar with the facts and circumstances surrounding the case schedule and deadlines").

177 *See* SIFMA 3, *supra* note 5, at 8 (recommending that FINRA require the creation of a case schedule with set deadlines; require conclusion of a hearing no later than the scheduled end date with each party being allocated equal proportion of time to present their case; and limit the number of witnesses each party can call and the length of time they can testify). *Contra* PIABA 3, *supra* note 5, at 7 (stating limiting the number of witnesses and the length of time they can testify "would be patently unfair" and limiting the ability to present evidence "would significantly prejudice customer's rights and create serious risk for the integrity of the awards FINRA arbitrators render").

178 *See* SIFMA 3, *supra* note 5, at 10 (recommending that FINRA staff attend and observe more arbitration proceedings to identify and address issues in real time).

179 *See, e.g.*, *The Neutral Corner*: Volume 3, 2025, *supra* note 11, at 6; FINRA, 2024 Neutral Workshop: Arbitrating Efficiently With the DR Portal (2024). For additional information about arbitrator training, *see supra* Section II.E. Arbitrator Training.

180 *See* Arbitrator's Guide, *supra* note 83, at 24 (stating the goal of FINRA and the arbitrators is commencement of evidentiary hearings within nine months or less after the IPHC). To maximize the efficient administration of a case by the panel, FINRA schedules an IPHC for the panel to set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. *See* Rules 12500 and 13500.

181 *See* Arbitrator's Guide, *supra* note 83, at 47 (stating while FINRA "rules do not limit the number of times the arbitrators may postpone a hearing, arbitrators should be mindful that one of the goals of arbitration is to provide a speedy method for resolving disputes").

182 *See id.* at 56 (encouraging arbitrators to be efficient in managing time during hearings). FINRA also provides the arbitrators with a hearing script to use during hearings. *See* FINRA, Hearing Procedure Script: 3 Member Panel (June 16, 2025).

183 *See* Arbitrator's Guide, *supra* note 83, at 29. *See also* FINRA Rules 12503(e)(5) and 13503(e)(5) (Motions) (providing discovery-related motions are decided by one arbitrator, generally the chairperson).

184 *See* Rules 12100(a) and 13100(a).

185 *See* Rules 12100(v) and 13100(t).

186 For purposes of the Customer Code, the term "*pro se*" refers to a party that is not represented by an attorney or others during an arbitration or mediation. *See* Rule 12100(z). *Pro se* customers are not required to use the Party Portal to file initial statements of claim or to file and serve pleadings and any other documents on the Director or any other party. However, if a *pro se* customer files a claim using the Party Portal, the *pro se* customer must use the Party Portal for the duration of the arbitration process. *See* FINRA Rule 12300(a)(2) (Filing and Serving Documents).

187 *See* Exchange Act Release No. 79296 (November 14, 2016), 81 FR 81844 (November 18, 2016) (Order Approving File No. SR-FINRA-2016-029); *see also Regulatory Notice 17-03* (January 3, 2017) (providing a list of key exceptions to service through the Party Portal).

To help parties and neutrals become familiar with the DR Portal, FINRA provides resources on its website including user guides, how-to videos and answers to frequently asked questions (FAQs). *See* FINRA, Dispute Resolution Portal (DR Portal).

In addition, to help further increase the efficiency of arbitration proceedings, FINRA has launched a mobile application that allows arbitrators to manage their cases using a mobile device.

188 An arbitrator may be removed from the roster for a variety of inappropriate conduct—related to, for example, ethics and professionalism or performance issues—that compromises their ability to serve effectively. FINRA staff and members of the NAMC are involved when evaluating whether an

arbitrator has engaged in or demonstrated conduct that may warrant removal. When findings suggest arbitrator removal may be warranted, FINRA staff will provide a removal recommendation to the chairperson of the NAMC and the chairperson of the NAMC's Neutral Roster Subcommittee for review. If both NAMC chairpersons are in unanimous agreement to remove an arbitrator, the Director will take such action.

189 For example, FINRA monitors the performance of arbitrators through staff observations during hearings and prehearing conferences and peer evaluations from an arbitrator's co-panelists. In addition, FINRA encourages arbitrators and parties to complete surveys on the DR Portal at the end of every case. *See* Arbitrator's Guide, *supra* note 83, at 83; Party's Reference Guide, *supra* note 175, at 40.

190 *See* Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (Order Approving File Nos. SR-NYSE-88-29; SR-NYSE-88-8; SR-NASD-88-29; SR-NASD-88-51; SR-NASD-89-19; SR-AMEX-88-29).

191 *Id.* at 21151.

192 *Id*. SICA was formed by the securities industry in 1977 at the SEC's invitation to review then existing arbitration procedures as an alternative to the implementation of the SEC's own proposals to establish a system for the resolution of disputes between broker-dealers and their customers. *See id.* at 21145. SICA included SRO representatives, industry groups, arbitration sponsors, and public interest representatives in its membership structure.

193 *Id.* at 21153-54. The Commission sent letters to the SROs in 1988 requesting that the SROs review issues related to the use of mandatory predispute arbitration agreements by their member firms. *Id.* at 21145.

194 *Id.* at 21154.

195 *Id.*

196 *See Notice to Members 94-54* (July 1, 1994). The NASD Legal Advisory Board was created in 1988 as a standing committee of the NASD Board to offer advice to and initiate ad hoc assignments for the Board.

197 *See* 1994 Task Force Report Card, *supra* note 17, at 20.

198 *See Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52 (1995). The *Mastrobuono* case involved a brokerage firm's client agreement that contained a New York "choice-of-law" provision and a provision requiring any controversy arising out of the parties' transactions to be arbitrated according to the rules of NASD or the NYSE. *See id.* at 58-59. The choice-of-law provision required that disputes be decided according to New York law, which allowed courts, but not arbitrators, to award punitive damages.

199 Rule 12904 describes the content and treatment of awards in FINRA's arbitration forum, including that arbitration awards contain the damages and other relief awarded.

200 *See Mastrobuono*, 514 U.S. at 61. In addition, the Court observed that the Arbitrator's Manual provided to NASD arbitrators stated that "arbitrators can consider punitive damages as a remedy." The Court concluded

that the choice-of-law provision introduced an ambiguity into an agreement that would otherwise allow punitive damages awards. The Court construed the ambiguity against the brokerage firm that drafted the agreement, thus enforcing the award of punitive damages to the customers. *See id.* at 62.

Prior to *Mastrobuono*, the circuits were split on whether a contractual choice-of-law provision selecting a state that prohibited arbitrators from awarding punitive damages (such as New York under *Garrity v. Lyle Stuart, Inc.*, 353 N.E.2d 793 (1976)) precluded an award of punitive damages that would otherwise be permitted. For example, the First, Eighth, Ninth, and Eleventh Circuits held that when an arbitration agreement incorporated AAA rules—which permitted arbitrators to grant "any remedy or relief" deemed "just and equitable" within the scope of the parties' agreement—arbitrators retained authority to award punitive damages notwithstanding a choice-of-law provision selecting a state that prohibited arbitrators from awarding punitive damages in arbitration. *See Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1386-87 (11th Cir. 1988); *Raytheon Co. v. Automated Bus. Sys., Inc.*, 882 F.2d 6, 11-12 (1st Cir. 1989); *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1062-63 (9th Cir. 1991); *Lee v. Chica*, 983 F.2d 883, 887-88 (8th Cir. 1993). In contrast, the Second Circuit held that the arbitrators exceeded their authority by awarding punitive damages where the parties' agreement contained a New York choice-of-law provision. *See Barbier v. Shearson Lehman Hutton Inc.*, 948 F.2d 117, 121-22 (2d Cir. 1991).

201 *See* Exchange Act Release No. 39371 (November 26, 1997), 62 FR 64428 (December 5, 1997) (Notice of Filing of File No. SR-NASD-97-47). Around the same time, as an alternative to this capping approach, SICA developed a proposal for appealing punitive damages awards exceeding $750,000, or punitive damages awards greater than $250,000 that also exceeded twice the compensatory damages award. The party against whom punitive damages were awarded could request appellate review, triggering the other party's option to accept a reduced punitive damages award based on the lesser of three caps: the cap of $750,000, twice compensatory damages, or applicable state law caps. If the other party accepted the reduced award, no appellate review would occur. If the other party did not accept the reduced award, an appellate arbitration panel would review whether the award exceeded amounts claimed or violated applicable state law standards governing punitive damages. However, the NASD Board determined to move forward with the capping approach. For additional information regarding SICA's proposal, *see* Thomas J. Stipanowich, *Punitive Damages and the Consumerization of Arbitration*, 92 Nw. U.L. Rev. 1 (1997).

202 1994 Task Force Report Card, *supra* note 17, at 20. The 1994 Task Force evaluated conflicting viewpoints regarding punitive damages. For example, the securities industry argued that arbitration proceedings do not have procedural safeguards, such as reasoned decisions and full appeal rights that are present in court litigation and that may help curtail excessive awards of punitive damages. In addition, the securities industry argued that punitive damages were

unnecessary since the extensive regulation of the securities industry for the SROs and the SEC adequately served to punish wrongdoers and deter misconduct. On the other hand, customers argued punitive damages should be available in arbitration because customers generally are compelled to arbitrate their disputes with broker-dealers and should not be deprived of a remedy that would otherwise be available to them in court litigation. Customers also interpreted NASD's code and other NASD rules as a guarantee of the same remedies that would be available to them in court. *See id.* at 21.

203 *See id.* at 22 (stating NASD withdrew the proposed rule change "because of negative comments and changes in the law that permitted reasonable punitive damages in securities arbitration"). NASD amended its conduct rules to prohibit members from using a predispute arbitration agreement to limit the types of damages available in arbitration. *See* Exchange Act Release No. 50713 (November 22, 2004), 69 FR 70293, 70295 (December 3, 2004) (Order Approving File No. SR-NASD-98-74) (clarifying the prohibition against predispute arbitration agreements that limit rights or remedies). In addition, the Supreme Court decision in *BMW of N. Am., Inc. v. Ira Gore, Jr.*, 517 U.S. 599 (1996) clarified that courts would not uphold excessive awards of punitive damages.

204 *See* Exchange Act Release No. 42160 (November 19, 1999), 64 FR 66681 (November 29, 1999) (Notice of Filing of File No. SR-NASD-98-74).

205 *See* 69 FR 70293, *supra* note 203, at 70295-96.

206 *Id.* at 70296 n.30.

207 An award is a document stating the disposition of a case. *See* Rules 12100(c) and 13100(c).

208 *See, e.g.*, *Regulatory Notice 21-16*, *supra* note 79 (reminding members that a choice-of-law or governing law clause in a customer agreement without an adequate nexus between the law chosen and the transaction or parties at issue, which suggests an intent to limit an award, or otherwise including provisions that attempt to limit the ability of a customer to file a claim or the authority of arbitrators to make an award, is a prohibited condition under Rule 2268(d)); *Regulatory Notice 16-25*, *supra* note 48; *Notice to Members 05-09* (January 31, 2005) (reminding members that NASD Rule 3110(f)(4)(A) (the progenitor of Rule 2268) requires that, if a choice-of-law provision is used, there must be an adequate nexus between the law chosen and the transaction or parties at issue); *Notice to Members 95-85* (October 1, 1995) (stating that a disclosure in a customer agreement that the law governing the agreement prohibits or may prohibit an award of punitive damages in arbitration is inconsistent with FINRA (then NASD) rules); *Notice to Members 95-16* (March 1, 1995) (notifying members that customer agreements of some members contained predispute arbitration clauses and other provisions that were inconsistent with FINRA (then NASD) rules by, for example, restricting or limiting the ability of customers to arbitrate disputes or the authority of arbitrators to make an award, including an award of punitive damages).

209 *See* Arbitrator's Guide, *supra* note 83, at 69. The standards for awarding punitive damages vary from state to state. While some states permit punitive damages for reckless indifference to the rights of others or for gross negligence, others permit punitive

damages only for conduct that is malicious or intentional. The *Restatement (Second) of Torts* provides "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant." *Restatement (Second) of Torts* § 908 (Am. Law Inst. 1979). Many courts say that there must be compensatory damages to support an award of punitive damages, but some courts allow recovery of punitive damages when only nominal damages have been awarded. *See id.* § 908 cmt. c and cases cited therein.

210 *See* Arbitrator's Guide, *supra* note 83, at 69.

211 *See id.*

212 The 47,835 awards include some awards rendered in cases where only non-monetary relief was requested. FINRA does not expect, however, that inclusion of these awards would materially affect its estimate of the total number of awards with punitive damages from March 1988 through December 2025.

213 *See* Rules 12904(b) and 13904(b) (providing, unless applicable law directs otherwise, all awards are final and not subject to review or appeal).

214 Section 10 of the FAA provides for the very limited judicial review of arbitration awards. Specifically, an award may be vacated: "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a). *See also* 9 U.S.C. § 11 (establishing the grounds under which an award may be modified or corrected).

215 SIFMA 3, *supra* note 5, at 4.

Some states have special pleading requirements for punitive damages claims. For example, Florida requires "a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages" before permitting punitive damages claims in any civil action, and prohibits discovery of financial worth until the pleading is permitted. *See* Fla. Stat. § 768.72(1) (2025). In certain civil actions, Colorado prohibits punitive damages claims in any initial claim for relief and allows amendment only after the exchange of initial disclosures and after the plaintiff establishes prima facie proof of a triable issue. *See* Colo. Rev. Stat. § 13-21-102(1.5)(a) (2025).

Other states impose bifurcated trials or phased proceedings. For example, Texas and New Jersey require bifurcated trials upon the defendant's request. *See* Tex. Civ. Prac. & Rem. Code § 41.009(a) (2025); N.J. Stat. § 2A:15-5.13(a) (2025). In Texas, during Phase

1, the trier of fact determines liability for compensatory and punitive damages and the amount of compensatory damages. Tex. Civ. Prac. & Rem. Code § 41.009(c). If liability for punitive damages is established during Phase 1, the trier of fact determines the amount of punitive damages in Phase 2. *Id*. § 41.009(d). In New Jersey, during Phase 1, the trier of fact determines liability for and the amount of compensatory damages. N.J. Stat. § 2A:15-5.13(b). If compensatory (not nominal) damages are awarded in Phase 1, the trier of fact determines liability for punitive damages in Phase 2. *Id*. § 2A:15-5.13(c)-(d).

California requires a phased presentation of evidence within a single proceeding rather than bifurcation in the traditional sense. Upon defendant's application, the court must preclude evidence of the defendant's profits or financial condition until the trier of fact returns a verdict awarding actual damages and finds the defendant guilty of malice, oppression, or fraud. *See* Cal. Civ. Code § 3295(d) (Deering 2025). Evidence of profit and financial condition is then presented to the same trier of fact. *Id.* California also prohibits punitive damages claims from stating the amount sought. *Id.* § 3295(e). These restrictions protect defendants from coercive settlements and minimize potential prejudice in jury trials. *See Torres v. Auto. Club of S. Cal*., 15 Cal. 4th 771, 777, 937 P.2d 290 (Cal. 1997).

Some states have mandatory or discretionary post-trial reviews of punitive damages awards by a judge. For example, in New Jersey, before entering judgment for a court award of punitive damages, the trial judge shall ascertain that the award is reasonable in its amount and justified in the circumstances of the case, in light of the purpose to punish the defendant and to deter that defendant from repeating such conduct. *See* N.J. Stat. § 2A:15-5.14(a) (2025). In Illinois, trial judges have discretion to determine whether jury awards of punitive damages are excessive and, if so, enter a remittitur and a conditional new trial. *See* 735 Ill. Comp. Stat. 5/2-1207 (2025).

Some states require written opinions that apply when appellate courts modify lower court judgments or awards of punitive damages, or have appellate procedures related to asserting punitive damages claims. For example, Colorado requires appellate courts to issue written opinions when vacating, modifying, reversing, setting aside, or remanding any portion of a lower court judgment. *See* Colo. App. R. 35(a) (2026). Texas requires appellate courts to "state, in a written opinion, the court's reasons for upholding or disturbing the finding or award" and mandates that such opinions "address the evidence or lack of evidence with specificity, as it relates to the liability for or amount of exemplary damages . . . ." Tex. Civ. Prac. & Rem. Code § 41.013(a) (2025). Florida permits appeals to the district courts of appeal of non-final orders granting or denying motions for leave to amend to assert claims for punitive damages, allowing earlier appellate review before final judgment. *See* Fla. R. App. Proc. 9.130(a)(3)(G) (2025).

216 SIFMA 3, *supra* note 5, at 5. *See also* SIFMA 1, *supra* note 5, at 1 (recommending that FINRA limit punitive damages awards). Separately, FINRA has received feedback that it should amend its rules to make clear that punitive damages are not an available remedy in FINRA arbitration.

217 *See* PIABA 3, *supra* note 5, at 4 (stating "FINRA should reject SIFMA's request to impose new limitations on punitive or other forms of damages" and arbitrators "understand that punitive damages are only warranted in exceptional circumstances when the relevant legal standard is met").

218 *See infra* Section II.I. Explained Decisions in Awards.

219 *See supra* note 60.

220 *See, e.g.,* JAMS and AAA appellate arbitration procedures, which are not limited to a review of punitive damages. *See* JAMS Optional Arbitration Appeal Procedures (instituted June 2003, current version eff. February 1, 2025); AAA Optional Appellate Arbitration Rules (eff. November 1, 2013).

221 *See* Rules 12904(e) and 13904(e).

222 *See* Rules 12904(h) and 13904(h). *See also* Arbitration Awards Online, *supra* note 38. *See infra* Section II.J. Arbitration Awards Online.

223 *See* Rules 12904(f) and 13904(f).

224 *See* Rules 12904(g) and 13904(g). However, parties cannot require explained decisions in simplified arbitrations that are resolved without a hearing or in default proceedings. *See* FINRA Rules 12800 and 13800 (Simplified Arbitration); FINRA Rules 12801 and 13801 (Default Proceedings).

Separately, arbitrators must provide a written explanation when issuing an award containing expungement of customer dispute information and when granting a dispositive motion. *See* FINRA Rules 12805(c)(8)(B) and 13805(c)(9)(B) (Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System); Rules 12504(a)(7) and 13504(a)(7); Rules 12206(b)(5) and 13206(b)(5).

225 *See* Rules 12904(g)(2) and 13904(g)(2). FINRA awards, including explained decisions, have no precedential value in other cases. Arbitrators are not required to follow any findings or determinations set forth in prior explained decisions. *See* Exchange Act Release No. 59358 (February 4, 2009), 74 FR 6928, 6929 n.13 (February 11, 2009) (Order Approving File No. SR-FINRA-2008-051); *Regulatory Notice 09-16* (March 1, 2009).

226 *See* Rules 12904(g)(2) and 13904(g)(2).

227 *See* Rules 12904(g)(3) and 13904(g)(3).

228 *See* Rules 12904(g)(4)-(5) and 13904(g)(4)-(5). *See also* Rules 12214(d)(1)-(2) and 13214(d)(1)-(2). If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of $400. *See* Rules 12214(d)(2) and 13214(d)(2).

FINRA provides guidance to arbitrators regarding explained decisions. For example, the Basic Arbitrator Training Program and chairperson training provide information about explained decisions. *See* Basic Arbitrator Training Program Transcript, *supra* note 83, at 68 (stating explained decisions are awards that include a written explanation of the decision; arbitrators may include a written decision within the award without payment; and parties must request an explained decision at least 20 days before the first scheduled hearing, and if they do, the chairperson is paid $400 for writing it); Chairperson Training Transcript, *supra* note 173, at 11 (advising that arbitrators must provide an explained decision if the parties

file a joint request at least 20 days before the first hearing date; the explained decision states the general reasons for the arbitrators' decision and does not need to include legal authorities or damage calculations; no fee is assessed to the parties; the chairperson will only receive an additional honorarium for writing an explained decision if parties timely file a joint request; and no additional honorarium will be paid if the explained decision is required by FINRA rules, such as when granting a motion to dismiss or recommending expungement of a customer dispute).

229 *See* 74 FR 6928, *supra* note 225; *see also Regulatory Notice 09-16*, *supra* note 225.

230 *See* 2014 Task Force Report, *supra* note 17, at 20-23. The 2014 Task Force considered a number of approaches for increasing the use of explained decisions, including whether FINRA should revisit a prior proposal to require explained decisions upon the request of a customer (or, for intra-industry disputes, upon the request of an associated person). *See* Exchange Act Release No. 52009 (July 11, 2005), 70 FR 41065 (July 15, 2005) (Notice of Filing of File No. SR-NASD-2005-032). In light of the comments, among other things, FINRA withdrew the proposal and filed a new proposal to require explained decisions upon the joint request of the parties. *See* 74 FR 6928, *supra* note 225, at 6929.

231 *See* Exchange Act Release No. 82829 (March 8, 2018), 83 FR 11256 (March 14, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-012). *See also* 2014 Task Force Final Status Report, *supra* note 17, at 7.

232 *See* 83 FR 11256, *supra* note 231, at 11258.

233 *See id*.

234 *See* GVC, *supra* note 5, at 3 (recommending that explained decisions include "citations to applicable legal authorities" and "itemized damage calculations (as applicable) warranted by and supported by the applicable facts and law").

235 *See supra* note 228 (discussing explained decisions guidance).

236 *See* Rules 12904(e) and 13904(e); Rules 12904(h) and 13904(h).

Since 1989, NASD rules have required that arbitration awards contain, among other things, the names of the parties, and have required that arbitration awards involving customers be made publicly available. *See* 54 FR 21144, *supra* note 190, at 21151. In its approval order, the Commission stated that: "Making awards publicly available is in our view very significant in promoting investor confidence in the arbitration system. Clearly, awards rendered by arbitrators in prior cases will not predict the vote or outcome of future cases. The awards will, however, provide greater public understanding of the arbitration process. Moreover, while the Commission cannot evaluate the strategic value of information regarding past awards in which a particular arbitrator participated, we note that some of the historic information has been compiled by individual industry participants for their own cases. Investors, who are typically one time users of the arbitration system, do not have access to any such information. The Commission believes that it is preferable for information on past arbitrations to be equally available to all parties." *Id*. at 21152.

Since 1993, NASD rules have required that all arbitration awards (not just those involving customers) be made publicly available. *See* Exchange Act Release No. 32740 (August 12, 1993), 58 FR 43968 (August 18, 1993) (Order Approving File No. SR-NASD-92-52); *see also Notice to Members 93-63* (September 1, 1993).

237 *See* Arbitration Awards Online, *supra* note 38. *See also The Neutral Corner*: January 2008 (stating that in 2007, FINRA deployed AAO, replacing an outside vendor, and then enhanced AAO to include NYSE's and other SROs' awards).

After the SEC approved NASD's rule requiring that arbitration awards be made publicly available, an individual could contact NASD to request a copy of an arbitration award. A party to a pending arbitration would receive, at no cost, either the last five awards rendered by each arbitrator regardless of when rendered or all the awards rendered in the prior 12-month period, whichever compilation of awards was greater. Any additional awards requested by a party would be provided at a cost of $5.00 per award, up to a maximum of $70.00 per case. Persons other than parties to a proceeding who requested an award would be charged $5.00 per award, with no ceiling. *See* 58 FR 43968, *supra* note 236, at n.6.

In 2001, NASD, through a contract with the Securities Arbitration Commentator, began providing parties with a searchable and free online award database that contained NASD awards. *See* Securities Arbitration Commentator, Inc., ARBchek; Michael A. Perino, Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations 20-21 n.65 (November 4, 2002).

238 In addition to FINRA arbitration awards, AAO contains historical awards for NASD, NYSE, AMEX (now NYSE American), the Philadelphia Stock Exchange (now Nasdaq PHLX) and the Municipal Securities Rulemaking Board.

239 As part of the arbitrator selection process, FINRA provides parties with a list of the arbitration awards in which each potential arbitrator has participated.

240 *See* SIFMA 1, *supra* note 5, at 9.

241 *See infra* notes 264 and 265 and accompanying text (discussing CRD). *See also infra* note 269.

242 *See* letter from Aleaha N. Jones, Pickard Djinis and Pisarri LLP, to Vanessa A. Countryman, Secretary, SEC, dated May 9, 2023 (submitting a comment in response to FINRA's proposed rule change (SR-FINRA-2022-033) to amend FINRA rules to make various clarifying and technical changes). *See also* letter from Paul J. Bazil, Pickard Djinis and Pisarri LLP, to Vanessa Countryman, Secretary, SEC, dated March 17, 2021 (submitting a petition for rulemaking to the SEC requesting to amend Rules 12904 and 13904).

243 *See* Rules 12904(j) and 13904(j) (providing "[a]ll monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction"). Customers who obtain a monetary award in arbitration can have the award confirmed in court, putting them in the same position—in terms of their ability to collect on that award—as if they had initially obtained the award through court proceedings. Thus, a customer's recovery depends on factors such as the ability of the respondent to pay, not on whether the customer obtained the award in arbitration or in court.

244 *See* FINRA Rule 9554(a) (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution). An associated person or member has four available defenses to FINRA disciplinary measures for non-payment in customer cases: (1) the firm or associated person paid the award in full; (2) the parties have agreed to installment payments or have otherwise settled the matter; (3) the firm or associated person has filed a timely motion to vacate or modify the award and such motion has not been denied; and (4) the firm or associated person has filed a petition in bankruptcy and the bankruptcy proceeding is pending or the award has been discharged by the bankruptcy court. An award must be paid immediately when a court denies a motion to vacate or modify the award, absent a court order staying compliance with the award. *See Notice to Members 00-55* (August 10, 2000).

245 *See* FINRA, Statistics on Unpaid Customer Awards in FINRA Arbitration (December 2025).

246 *See* FINRA, Member Firms and Associated Persons with Unpaid Customer Arbitration Awards. The list also includes those members and associated persons with unpaid customer arbitration awards, but where bankruptcy is a defense to the non-payment. These members or associated persons may be active in the brokerage industry notwithstanding any unpaid award due to the bankruptcy defense to non-payment.

247 *See* Rule 9554(a). In addition, members with unpaid awards cannot re-register with FINRA, and associated persons cannot register as representatives of any member, without paying or discharging the outstanding award. With respect to new members, in accordance with the standards for admission under the rules governing FINRA's Membership Application Program, FINRA can presumptively deny a new membership application if the applicant or its associated persons have a pending arbitration claim or are subject to an unpaid arbitration award. *See* FINRA Rule 1014(a) (Department Decision).

Unlike FINRA members, however, investment advisers registered with the SEC are not subject to disciplinary sanctions or suspension from the investment advisory industry if they do not timely pay arbitration awards assessed against them.

248 *See* Discussion Paper—FINRA Perspectives on Customer Recovery (February 8, 2018) (providing an overview of FINRA's arbitration forum and data about unpaid awards in the forum, describing the steps that FINRA has taken to address those unpaid awards, and identifying additional measures that could be taken to either enhance the resources to pay such awards or provide greater incentives to pay such awards). In addition, to better inform discussions regarding customer recovery, FINRA makes available on its website data on unpaid arbitration awards arising in FINRA's arbitration forum. *See supra* note 245.

249 The amendments prevent a member with substantial arbitration claims from avoiding payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers or owners, to another firm and closing down. The amendments also address situations in which members are considering hiring individuals with pending

arbitration claims. *See* Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR-FINRA-2019-030); *see also Regulatory Notice 20-15* (May 21, 2020).

250 *See* Exchange Act Release No. 88254 (February 20, 2020), 85 FR 11157 (February 26, 2020) (Order Approving File No. SR-FINRA-2019-027); *see also Regulatory Notice 20-11* (April 9, 2020).

251 *See* Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR-FINRA-2020-011, as Modified by Amendment No. 1); s*ee also Regulatory Notice 21-09* (March 10, 2021) (adopting new rules to address associated persons with a significant history of misconduct and the members that employ them); *see also* Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2); *see also Regulatory Notice 21-34* (September 28, 2021) (adopting new rules to address members with a significant history of misconduct).

252 The top controversy types in customer arbitrations include breach of fiduciary duty, negligence, misrepresentation, failure to supervise, breach of contract, omission of facts, and suitability. *See* Dispute Resolution Services Statistics, *supra* note 35. A single arbitration case may include multiple controversy types.

253 *See* Hugh Berkson and David P. Meyer, FINRA Arbitration's Persistent Unpaid Award Problem, PIABA (September 29, 2021); Andrew Stoltmann and Hugh D. Berkson, Unpaid Arbitration Awards: The Case For An Investor Recovery Pool, PIABA (March 7, 2018); Hugh D. Berkson, Unpaid Arbitration Awards: A Problem The Industry Created – A Problem The Industry Must Fix, PIABA (February 25, 2016). *See also* PIABA 3, *supra* note 5, at 2 (discussing the FINRA fee rebate in July 2025 to members).

254 SIFMA, Submitted Testimony of the Securities Industry and Financial Markets Association before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Hearing entitled "Legislative Proposals to Examine Corporate Governance" (June 28, 2018).

255 *See* PIABA 1, *supra* note 5, at 7-8.

256 *See* Discussion Paper—FINRA Perspectives on Customer Recovery, *supra* note 248.

257 *See* PIABA 1, *supra* note 5, at 9-10. Under Rule 12100(w) of the Customer Code, an associated person means: "(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or (2) A sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not:

(A) Any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA; or

(B) Any such person's registration is revoked, cancelled, or suspended, the person has been expelled or barred from FINRA, or the person's registration has been terminated for a minimum of 365 days.

For purposes of the Code, a person formerly associated with a member is a person associated with a member."

258 *See* Discussion Paper—FINRA Perspectives on Customer Recovery, *supra* note 248.

259 *See* SIFMA 1, *supra* note 5, at 1; SIFMA 3, *supra* note 5, at 5-6 (citing letter from Kevin M. Carroll, Deputy General Counsel, SIFMA, to Richard Berry, Executive Vice President and Director of DRS, FINRA, dated February 20, 2024 (SIFMA 4)).

260 *See* SIFMA 3, *supra* note 5, at 6. As discussed above, as the neutral administrator of the arbitration forum, FINRA does not have any input into the outcome of arbitrations and decisions are made by the independent arbitrators selected by the parties. Thus, any training that FINRA provides to arbitrators is neutral and informative, focusing on procedural matters and not instructing on substantive issues.

261 *See id*.

262 *See id.* (recommending that FINRA "amend Form U5 to replace required narrative fields with regulator-generated, drop-down menus of check-the-box disclosures" and "[t]o the extent that a firm checks the appropriate boxes, FINRA could then instruct arbitrators that the firm is entitled to safe harbor protection from a U5 defamation claim related to such disclosures"); SIFMA 4, *supra* note 259, at 3 (stating Form U5 defamation claims in FINRA's arbitration forum should be subject to a qualified immunity defense and noting 15 states provide qualified immunity and "New York provides absolute privilege" for U5 statements required by industry rules); Sigma and Parkland, *supra* note 5, at 2-6.

In 1998, NASD filed a proposed rule change designed to address the prospect that members may be reluctant to make complete disclosures on forms required to be filed with NASD because of the potential for lawsuits relating to defamation claims by former or present employees. *See* Exchange Act Release No. 39892 (April 21, 1998), 63 FR 23321 (April 28, 1998) (Notice of Filing of File No. SR-NASD-98-18). The proposed rule would have created a uniform qualified immunity standard for statements made in good faith in certain disclosures filed with NASD on Forms U4 and U5. A registered person could have overcome the qualified immunity standard by proving in an arbitration proceeding by clear and convincing evidence that the member knew at the time the statement was made that it was false in any material respect, or that the member acted in reckless disregard as to the statement's truth or falsity. For purposes of NASD arbitration, the rule would have superseded state law on the same subject. The proposed rule change was withdrawn in 2005 due, in part, to state and judicial action in this area.

263 *See* SIFMA 2, *supra* note 5, at 13; LPL, *supra* note 5, at 5.

264 The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4, Form U5 and Form U6 (Uniform Disciplinary Action Reporting Form). Copies of the uniform registration forms are available on the Registration Forms page. The uniform registration forms are SEC forms in some cases (*e.g.*, Form BD). The SEC, SROs and the states use the uniform registration forms,

and any amendments to or guidance on such forms would be subject to discussion with, and may require action by, these regulators, including SEC approval.

265 BrokerCheck is a free tool available on FINRA's website to help customers make informed choices about the registered persons and members with which they may conduct business. BrokerCheck fulfills FINRA's statutory obligation to establish and maintain a readily accessible electronic or other process to receive and promptly respond to inquiries regarding registration information on, among others, members and associated persons. *See* 15 U.S.C. § 78o-3(i).

266 Questions 14J on Form U4 and 7F on Form U5 ask whether allegations accusing a broker of certain misconduct were made prior to the broker's separation from the firm.

Section 3 of Form U5 addresses the reason for a broker's termination. This section requires that, in the case of a broker's full termination (*i.e.,* the termination of all registrations with SROs and the states), the securities firm provide one of the following reasons for the broker's termination: "Discharged," "Other," "Permitted to Resign," "Deceased" or "Voluntary." If the securities firm selects "Discharged," "Other" or "Permitted to Resign," the firm must provide an explanation regarding the termination, also known as a termination comment. If the firm does not provide a termination comment, CRD will reject the filing of the Form U5.

Information regarding a broker's termination sometimes is also reported in Question 7B of Form U5, which asks whether a broker currently is, or at termination was, under internal review for certain misconduct.

An affirmative response to one of the disclosure questions requires the firm to complete a corresponding Disclosure Reporting Page to provide additional details on the matter.

267 Question 14I on Form U4 and Question 7E on Form U5 require disclosure of certain investment-related, consumer-initiated arbitrations, civil litigations or customer complaints which allege sales practice violations.

268 Firms must provide the person whose registration has been terminated with a copy of any Form U5 (initial or amended) at the same time that it is filed with FINRA. In addition, firms must file an amended Form U5 when they learn of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete. The value of the information is dependent on its completeness and accuracy. The absence of accurate information, as well as the presence of clearly inaccurate information, decreases the reliability and hence the value of the disclosure regime. *See Regulatory Notice 10-39* (September 8, 2010) (reminding firms of their obligation to provide timely, complete and accurate information on Form U5).

269 For information regarding the expungement of employment terminations and internal reviews, *see Notice to Members 99-09* (February 1, 1999); *Notice to Members 99-54* (July 1, 1999); FINRA, *The Neutral Corner:* Volume 2 – 2010 (May 2010). For information about the requirements for expunging customer dispute information, *see* Rules 12800, 12805 and 13805; *see also* FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System).

270 An associated person can provide a brief summary on Form U4 of the circumstances leading to the disclosure as well as the current status or final disposition. Form U5 includes this ability to provide a summary, but the associated person may not be in a position to submit the Form U5 if they are no longer registered with the firm making the filing. An individual who is no longer registered, but for whom a BrokerCheck report is available, may submit a request to add a Broker Comment that provides an update or adds context to information disclosed through BrokerCheck. *See* FINRA, Guidelines for Broker Comments on BrokerCheck.

271 *See Notice to Members 99-09*, *supra* note 269; *Notice to Members 99-54*, *supra* note 269. *See also* FINRA, *The Neutral Corner*: Volume 4 – 2013 (December 2013); *The Neutral Corner*: Volume 2 – 2010, *supra* note 269; FINRA, *The Neutral Corner*: December 2001 4-6.

272 *See Notice to Members 99-54*, *supra* note 269. *See also* FINRA, *The Neutral Corner*: Volume 2 – 2013 10 (June 2013).

273 *See id. See also* SIFMA 4, *supra* note 259, at 2 (stating "the only guidance that FINRA has issued to arbitrators and member firms relates *solely* to claims for *expungement* of Form U5 information that is deemed to be *defamatory in nature*, and not to *actual* claims for defamation").

274 *See supra* note 60.

275 In addition, because FINRA accepts investment adviser related disputes in its arbitration forum on a voluntary, case-by-case basis, FINRA welcomes comment on any issues related to investment adviser arbitration. *See* FINRA, Guidance on Disputes between Investors and Investment Advisers that are Not FINRA Members.

Reportedly, investment advisers widely include mandatory predispute arbitration clauses in their customer agreements. These clauses typically require customers to arbitrate in private arbitration fora. The recent focus on the use of mandatory predispute arbitration clauses in investment adviser client agreements has raised questions regarding how terms contained in some of those clauses affect the arbitration process or outcomes for investment adviser clients and how investment adviser arbitration compares to arbitration involving broker-dealers under FINRA rules and procedures. *See, e.g.,* SEC Office of the Investor Advocate, Mandatory Arbitration among SEC-Registered Investment Advisers (June 2023) (publishing the findings of a 2023 study conducted by the SEC's Office of the Ombuds in collaboration with the SEC's Office of the Investor Advocate, including that "[a] comparison of relevant rules in the FINRA [Customer Code] supported stakeholder concerns about the use of restrictive terms in advisory agreement mandatory arbitration clauses"); SEC Office of the Investor Advocate, Fiscal Year 2023: Report on Activities 39 (December 5, 2023) (reiterating the findings of the study). *See also* Recommendation of the SEC Investor Advisory Committee Regarding the Use of Mandatory Arbitration Clauses By Registered Investment Advisers (June 5, 2025) (noting the SEC's Investor Advisory Committee hosted a panel in December 2024 that discussed "the use and scope of mandatory arbitration clauses by registered investment advisers and the impact of such clauses on clients" and, in June 2025, the

SEC's Investor Advisory Committee made recommendations to the SEC with respect to the use of predispute arbitration clauses by SEC-registered investment advisers, including that the SEC should: (1) "prohibit the use of specific types of restrictive clauses within predispute arbitration clauses and require similar investor protections available through FINRA Dispute Resolution to harmonize the scope and content of predispute arbitration clauses used by registered investment advisers and brokerage firms" and (2) "require notice and disclosure of predispute arbitration clauses and arbitration awards in a manner consistent with disclosures made by brokerage firms under FINRA Rules").