

A Message from FINRA's President and CEO Regarding the External Review of FINRA's Enforcement Program

June 30, 2026

Last year, as part of *FINRA Forward*, FINRA engaged two [outside experts](#), Professor Paul R. Eckert of William & Mary Law School and former SEC Commissioner Troy A. Paredes of Paredes Strategies, to identify potential improvements to FINRA's enforcement function to better serve our self-regulatory mission of protecting investors, safeguarding market integrity, and supporting vibrant capital markets in which everyone can participate with confidence.

The following Report from Messrs. Eckert and Paredes sets forth their recommendations. We welcome these recommendations, which reflect a thoughtful evaluation of FINRA's enforcement program informed by feedback from various stakeholders. Taken as a whole, the Report identifies important strengths for FINRA to build upon (including [recent enhancements](#) to the enforcement program) and new ideas for FINRA to utilize as we strive for continuous improvement.

Now that the Report has been finalized, the next stage of *FINRA Forward* in enforcement begins. FINRA is committed to drawing on these recommendations to strengthen our enforcement program, make necessary changes, and ensure it is operating in a fair, transparent, and effective manner. As the Report suggests, we will consider the recommendations both individually and holistically, and our work will be guided by several overarching themes highlighted in the Report.

- First, as the Report emphasizes, FINRA's role as a self-regulatory organization (SRO) warrants a distinct regulatory approach. Among other things, effective self-regulation is informed by industry expertise and feedback; focuses on enabling members to better serve investors and uphold shared standards in the industry; and emphasizes education and outreach to help identify and address areas warranting heightened attention. The goal is to address risks to investors and markets before disciplinary action is required, while being prepared to vigorously pursue such action where appropriate. In responding to the recommendations, FINRA will consider how best to achieve the promise of the SRO model.
- Second, consistent with FINRA's broader SRO role and responsibilities, we will consider the implications of these enforcement recommendations for our other regulatory functions. FINRA's enforcement group works in close coordination with our risk, examination, surveillance, investigation, and intelligence teams. Most enforcement matters originate as referrals from these areas. It is therefore not surprising that various recommendations address interactions between enforcement and these other functions, or suggest enhancements that may also apply to them. Our recent initiative to create a consolidated [Regulatory Operations department](#) that brings all these functions together within a coordinated governance structure provides an important and timely vehicle to consider the applicability of these enforcement recommendations to our broader self-regulatory programs.
- Third, as noted in the first recommendation, the principles that guide enforcement and related functions matter and should be clearly articulated. We have highlighted a number of principles before—including operating an [effective, fair, and consistent](#) program that achieves certain [key objectives](#). As recommended, we will consolidate and expand on our prior statements in a public enforcement manual and in our training programs to address, among other principles: the vital role of enforcement in preserving the integrity of the SRO model and investor confidence; the need to consider, as noted above, the distinguishing features of self-regulation; when resolving a particular matter, the importance of focusing


on the right outcome in that matter rather than any implications for broader activity-based metrics (e.g., case numbers, fine amounts); the benefits to FINRA's mission of addressing violations or compliance shortcomings expeditiously, prioritizing restitution for investors, tailoring outcomes to what is most consequential, and deploying resources effectively; and the need to consider whether there is sufficient ambiguity regarding applicable regulatory requirements to warrant rulemaking or interpretive guidance rather than disciplinary action.

- Finally, as CEO I will be working closely with Greg Ruppert, Chief Regulatory Operations Officer, and Bill St. Louis, Head of Enforcement, to guide our response to the Report and (as proposed in the second recommendation) to engage more directly in enforcement's internal operations and decision-making—all to support the overall governance of the program and help ensure that outcomes are aligned with our guiding principles and objectives. In addition, FINRA's Board of Governors—which has been briefed on the Report—will be monitoring our approach to the recommendations and will continue to enhance as appropriate its governance and oversight role with respect to the enforcement program.

Due to the breadth and complexity of the recommendations, and their connection to various parts of our regulatory operations, it will take time to address them in a thoughtful and comprehensive manner. We will provide updates on our work in the [FINRA Forward section of our website](#), where we share [enhancements](#) already made to the enforcement program—many of which align with areas of focus in the Report. We will also continue to provide updates on *FINRA Forward* more generally, such as a recent [progress report](#) and a [quarterly regulatory policy agenda](#).

I want to express my appreciation to Messrs. Eckert and Paredes for their valuable insights, thoughtful analysis, and constructive engagement with FINRA and our many stakeholders. Similarly, I thank the various parties both within and outside our membership who took time to provide feedback in this process to help improve FINRA's enforcement program.

Finally, I thank Bill St. Louis and his team for their ongoing commitment to enhancing the enforcement program. They and the rest of FINRA's staff work hard every day to promote investor protection, market integrity, and vibrant capital markets. Their openness to engaging with this process and responding to feedback is a testament to their professionalism, dedication to our mission, and commitment to continuous improvement.



Robert W. Cook
President and Chief Executive Officer

**RECOMMENDATIONS BASED ON A REVIEW OF THE
POLICIES, PROCEDURES, PROCESSES, AND PRACTICES OF
FINRA'S ENFORCEMENT PROGRAM**

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INTRODUCTION

In July 2025, as part of the *FINRA Forward* initiative,¹ FINRA invited us to conduct a review to help identify and evaluate opportunities for “meaningful, common-sense improvements” to FINRA’s enforcement program, together with related oversight, to better serve FINRA’s self-regulatory mission of “protecting investors, safeguarding market integrity, and supporting vibrant capital markets.”² The “FINRA Forward in Enforcement” announcement recognizes that FINRA “must be prepared, when necessary, to bring enforcement actions to address wrongdoing, deter future misconduct, and protect investors, member firms, and markets from significant harm” and that “fair and effective enforcement actions play a vital role in preserving confidence in America’s securities markets.”

We very much embrace both the need for a robust and fair FINRA enforcement program and FINRA’s commitment to continuous improvement that brought about our engagement. Investor protection and market integrity are intrinsically consequential, while also operating as predicates that capital markets depend on to thrive. We are honored that FINRA afforded us the occasion to make recommendations (“Recommendations”³) that we think FINRA should consider as it evaluates ways to improve its enforcement program, with specific focus on FINRA’s Enforcement Department (“Enforcement”).

As described in the July 2025 announcement, the scope of our review is to “consider governance, policies, processes, and communications, as well as how FINRA enforcement works with other FINRA departments and federal and state regulators.” Certain topics fell outside our review, such as examinations, surveillance, hearings, arbitration, and judicial review. Groups and functions – other than Enforcement – within FINRA’s relatively new Regulatory Operations organization were also outside our review.⁴ It was envisioned that we would solicit and consider comments and suggestions from a variety of FINRA constituencies, including FINRA leadership at various levels across the organization, the FINRA Board of Governors (“Board”), FINRA members, and those who regularly interact with FINRA’s enforcement function in different ways. Accordingly, we had dozens of meetings with FINRA management and Staff, members of FINRA’s Board, FINRA advisory committees, FINRA member firms, securities industry trade associations and their membership, representatives of state securities regulators, investor advocacy groups and lawyers handling customer arbitration claims, and groups of securities enforcement practitioners who regularly advise firms and individuals in FINRA enforcement matters. We greatly appreciate the time and attention that these many professionals took to share their experiences and views with us. These discussions have assisted our assessment of FINRA’s

¹ See <https://www.finra.org/about/finra-forward>.

² See <https://www.finra.org/media-center/blog/finra-forward-in-enforcement>.

³ We adopted the convention of framing the Recommendations in terms of “member firms,” although in doing so, we do not mean to suggest that a particular Recommendation is not relevant for (and should not be applicable to) individual associated persons and registered representatives. Procedural safeguards for firms should generally be afforded to individuals while recognizing that certain adaptations may be warranted when a Recommendation is applied to individuals rather than firms and that recommended procedural enhancements address burdens primarily borne by firms themselves (e.g., FINRA Rule 8210 requests for information).

⁴ See <https://www.finra.org/about/how-we-operate>.

enforcement policies, procedures, processes, and practices, along with opportunities for enhancements and improvements.

We were not expected to employ professional staff to support our review, analyze FINRA's docket of pending or past enforcement matters beyond general familiarization with existing enforcement policies, procedures, processes, and practices, or engage in a systematic reevaluation of FINRA's existing rulebook and authorities relating to enforcement; and we have not done so. We were instead invited and expected to bring our own varied experiences and insights to bear, informed by our meetings and conversations with the various FINRA constituencies described above, other materials we were provided, and our own observations, understandings, and perspectives. Our Recommendations are the product of the approach we followed and our personal judgment, and not of data-driven analysis, empirical testing, or an audit.

Throughout our review, we were aided by the cooperation of FINRA. We appreciate the productive dialogue with FINRA's CEO and other members of FINRA management, with Enforcement leadership, and with FINRA Staff, including those whose work only tangentially relates to enforcement but who nonetheless conveyed useful input. We are especially grateful for the conversations we had with FINRA's Head of Enforcement. Those we spoke with shared views concerning their own perceptions about what is working well, where there are opportunities for improvement, and the feasibility of certain of our Recommendations while they were still preliminary and taking shape. FINRA also provided us with documentation about policies, procedures, and practices, as well as briefings about the processes by which matters are assessed, developed, tracked, reviewed, approved, and resolved. In short, FINRA leadership and Staff were candid, constructive, open-minded, and supportive throughout our engagement.

One of the signal strengths of FINRA's enforcement program has been its active devotion to protecting investors, promoting market integrity, and fostering vibrant capital markets, reflecting a notable contribution to achieving FINRA's mission. As we have both heard and experienced over the years, FINRA's Enforcement Staff overwhelmingly is comprised of committed, responsible professionals whose diligence helps FINRA advance enforcement matters across FINRA's rulebook, drawing on Enforcement's considerable expertise in collaboration with other FINRA Departments and leadership. There is a great deal to commend. Importantly, various features and elements of FINRA's existing enforcement policies, procedures, processes, and practices are oriented toward interests associated with due process, transparency, and fairness. Due process, transparency, and fairness are essential hallmarks of an effective enforcement program, alongside rooting out and redressing wrongdoing.

Our Recommendations are in no way meant to detract from the positive and beneficial attributes and impacts of FINRA's enforcement program or call into question whether FINRA has in place a well-established foundation and structure for enforcement to help FINRA achieve its mission. Rather, our Recommendations identify opportunities – new concepts and structures, practical adjustments, or simply refinements to existing enforcement policies, procedures, processes, and practices – for FINRA to consider in striving to improve. Our Recommendations, in several respects, are meant to reinforce and sustain good processes and practices currently occurring at FINRA and should not be interpreted as implying widespread shortcomings.

To its credit, FINRA has shown a willingness and ability to adapt, as illustrated by a number of Enforcement’s recently announced updates and FINRA’s decision to invite outside perspectives that complement its self-evaluation. FINRA has been at work implementing enhancements, many of which have a direct connection to several of our Recommendations. Highlights of what FINRA has already accomplished with respect to its enforcement program include:⁵

- Affording potential member firm respondents an opportunity to meet with Enforcement Staff during an “introductory meeting” when a matter is referred to Enforcement so that Enforcement can share its “initial areas of [enforcement] focus,” address questions the firm wants to raise, and “listen to any observations or concerns the firm may share.”
- Requiring Enforcement Staff to provide potential respondents with status updates at least every 90 days after a matter has been referred to Enforcement.
- Affording member firms a meeting (in addition to the Wells process) where Enforcement can share its investigative findings and related evidence once the enforcement process has advanced toward its end – and where a firm can offer its own view of the facts and other relevant considerations – before a formal enforcement action (if any) is proposed by the Staff.
- Introducing a pilot program to encourage self-reporting and proactive member-firm internal reviews and, if warranted, remediation.
- Reaching out to firms and individual representatives before issuing a Cautionary Action Letter (“CAL”) so that firms and individuals have the chance to “provide context or challenge any conclusion before the informal disciplinary resolution is determined.”
- Reaching out to firms before issuing a request for information under FINRA Rule 8210 so that the parties can “clarify the scope and expectations [of the request] and ask questions.”
- Increasing the general time allowed for a Wells response to 30 calendar days, which allows potential respondents more time to “make a meaningful submission.”

Before proceeding to the Recommendations themselves, it is worth offering a few words of additional context.

First, we take seriously FINRA’s status as a Self-Regulatory Organization (“SRO”) under the federal securities laws, as distinguished from a governmental agency like the Securities and Exchange Commission (“SEC”). In all FINRA does to meet its mission, including in connection with (but not limited to) its enforcement program, it is essential to recognize the foundational rationale and expectations that underpin what it means to be an SRO. From the earliest days of

⁵ See <https://www.finra.org/media-center/blog/enhancing-our-enforcement-program>.

federal securities regulation – even before the passage of the Maloney Act – self-regulation was embraced as instrumental to the orderly oversight of broker-dealers and the markets in which they operate. Accordingly, we kept in mind that the “self” that sets SROs, including FINRA, apart from the government must be appropriately and consistently carried out in practice. This not only has informed our Recommendations but also should inform how FINRA implements the Recommendations.

Second, we did not approach our review from an angle that there should be more or less enforcement by FINRA. Instead, we centered our review, as we were asked to do, on workflows, processes, procedures, practices, structures, governance, oversight, and the like with respect to the Enforcement Department.

Third, we did not take up any substantive legal or regulatory theories. In other words, we have not expressed any opinions on what is (or is not) a violation of any specific rule, regulation, or statute.

As for implementing the Recommendations, we acknowledge that there are choices for FINRA to make – accounting for a host of factors and considerations – in deciding whether and how to implement a Recommendation or collection of Recommendations, and we have tried not to micromanage the internal affairs and functions of FINRA. For example, we understand that FINRA currently is restructuring its entire regulatory program and operations, the results of which could affect how FINRA chooses to respond to certain Recommendations. Among other things, elements of FINRA’s restructuring might successfully meet the objectives of one or more Recommendations, even if differently than the four-corners of a given Recommendation (or Recommendations) might contemplate at first blush.⁶ Relatedly, it is useful to view the Recommendations holistically, and not only one-by-one. Depending on how some Recommendations are implemented, the marginal benefit of implementing other Recommendations might be lessened, which is sensible to account for when deciding how best to leverage the Recommendations as a whole to improve the enforcement program. Lastly, we anticipate that FINRA, in implementing Recommendations, likely will determine that reasonable exceptions from certain recommended processes and procedural steps are warranted if necessary to safeguard investors and the market from serious misconduct and harm, such as where expeditious action is called for.⁷

⁶ In addition, we note that the objectives, principles, and approaches contemplated by the Recommendations also could apply – perhaps with adaptation – to non-Enforcement groups and functions within Regulatory Operations, such as investigations, as FINRA’s restructuring progresses and is finalized.

⁷ We appreciate that exceptions to certain processes and procedural requirements for exigent circumstances are appropriate. *Cf.* FINRA Rule 9800 *et seq.* (concerning temporary and permanent cease-and-desist orders); FINRA Rule 9526 (concerning expedited review of membership eligibility proceedings).

RECOMMENDATIONS

Management, Governance, and Oversight

1. **Principles of Enforcement.** In the July 2025 “FINRA Forward in Enforcement” announcement, FINRA, reflecting its self-regulatory status, aptly explains that “enforcement should work effectively and efficiently as an integral part of [FINRA’s] broader oversight program. And it should afford member firms and their associated persons a transparent, fair, and consistent process.” Without question, a robust and fair enforcement program is essential to meeting FINRA’s mission, grounded in safeguarding investors and the capital markets more generally – although it is important to view enforcement within the context of FINRA’s holistic mission. From the perspective of FINRA’s “broader oversight program” as an SRO under the federal securities laws, to which enforcement makes a substantial and vital contribution, we recommend that FINRA adopt an appropriate policy, code, or canon – perhaps in the Enforcement Manual⁸ – that acknowledges the following:

- a. The kinds of statistics that routinely are looked to when evaluating an enforcement program (at FINRA and otherwise) – while relevant, to be sure – are an imperfect indication, in-and-of-themselves, of an enforcement program’s impact and success, and commonplace conceptions or measures of “wins” and “losses” (or “stats”) do not always fully capture whether the right results were reached or the program’s effectiveness, taking into account FINRA’s mission as a whole.⁹
- b. An impactful enforcement program depends on detecting misconduct and holding wrongdoers accountable. At the same time, focusing and tailoring an enforcement matter to what is most consequential, reaching an expeditious resolution of a matter, or not pursuing a matter beyond a certain point sometimes can be the most efficient and effective way to advance FINRA’s mission and achieve compliance objectives, such as by allowing resources to be deployed against other priorities.
- c. Alternatives to formal enforcement action should be carefully considered when such alternatives might more quickly resolve compliance shortcomings and remedy investor harm, mindful that the particular facts, circumstances, and equities must be considered.

Relatedly, FINRA should continue to develop ways to recognize and encourage behavior consistent with the above, along with recognizing and encouraging, as we understand FINRA does, other contributions to the enforcement program that protect investors and safeguard markets from misconduct. For example, among other possibilities, FINRA could enhance the ways it recognizes individual Staff involved in a matter that reaches an efficient and effective

⁸ See Recommendation 8.

⁹ Part and parcel of this, FINRA should evaluate additional potential metrics that it might determine are productive to collect, track, and analyze, in furtherance of expanding the set of data that senior management (along with the Board) uses to evaluate the enforcement program in relation to FINRA’s overall mission.

resolution that promotes compliance even if the matter does not lead to a settlement or disciplinary proceeding.¹⁰

2. **Enhanced CEO Involvement.** FINRA’s CEO currently performs several key management, governance, and oversight roles with respect to FINRA’s enforcement program but does not ordinarily participate in discussions about specific matters before they are resolved, based in part on recusal concerns.¹¹ We appreciate the recusal concerns but believe that the potential benefit of the CEO’s enhanced and more frequent personal involvement in specific matters (and categories of matters) before resolution – as part of FINRA’s internal processes and in an effort to ensure that FINRA enforcement policy and programmatic objectives are effectuated – generally outweighs the recusal risk if a matter results in a contested and appealed disciplinary proceeding.

Accordingly, building on the FINRA CEO’s current roles with respect to the enforcement program, the FINRA CEO should be more actively involved – as appropriate and within reasonable guardrails – with respect to specific matters (and categories of matters) as part of FINRA’s internal processes, even before such matters are resolved.¹² This pertains to, among other things, advising on whether formal enforcement action is warranted and weighing in more than in the past on categories of matters that meet criteria FINRA establishes. By way of example, the CEO should be free to offer input and perspectives on what might constitute appropriate settlement terms and relief in different contexts, and whether proceeding with a FINRA enforcement action is an efficient and effective use of resources where federal authorities are pursuing a related matter. As part of this, this Recommendation contemplates an enhanced role for the CEO in reinforcing acceptable theories and interpretations of rules and regulations, along with matters of policy, procedure, process, and practice that can arise.¹³

In support of this Recommendation, and consistent with enforcement program governance generally, the Enforcement Department should evaluate opportunities to build upon the current process Enforcement leadership undertakes for systematically reviewing and adjusting FINRA’s docket of enforcement matters. This evaluation should consider, among

¹⁰ *Cf.* Recommendations 19 and 20.

¹¹ Any Governor of the Board, including FINRA’s CEO, may at such Governor’s discretion call a disciplinary proceeding for review by the Board, which then considers the proceeding as a whole. *See* FINRA Rule 9351.

¹² While this Recommendation centers on the CEO’s involvement – and the next Recommendation centers on the involvement of FINRA’s National Adjudicatory Council – in light of the combination of the two, we think it is appropriate for FINRA to expressly reassess the Board’s governance and oversight role with respect to the enforcement program as well.

¹³ We note that FINRA recently created a new Regulatory Operations organization led by the Chief Regulatory Operations Officer (“CROO”), and that FINRA’s Head of Enforcement now reports to the CROO. This structure provides an opportunity for an additional layer of oversight and governance with respect to the enforcement program, including how Enforcement coordinates with FINRA’s other regulatory groups and functions. In implementing this Recommendation, we appreciate that FINRA will need to take into account how to achieve the objectives of the new CROO role in managing Regulatory Operations overall (including Enforcement) and the appropriate allocation of responsibilities between the CEO and the CROO, while still ensuring effective engagement by the CEO as contemplated by this Recommendation and consistent with its objectives.

other things, the frequency of the leadership team’s review of the docket, the nature and granularity of the review, and the seniority of who regularly engages in the review.

3. **Opportunities to Improve Independent Review.** FINRA should reevaluate the delegation to the Office of Disciplinary Affairs (“ODA”) by the National Adjudicatory Council (“NAC”) of the NAC’s authority to review proposed settlements in accordance with FINRA Regulation By-Laws and certain FINRA rules.¹⁴ Among other things, this reevaluation should involve considering whether the delegation should be revised to restore the role of the NAC as the principal reviewer of proposed settlements as envisioned by the By-Laws absent delegation; the role of each of the Board and the NAC in considering potential revisions to the delegation; determining which (if any) types of matters the delegation should be withdrawn for; the standard of review that should be applied by each of the NAC, a committee of the NAC (like the current Review Subcommittee), and ODA;¹⁵ the nature of the NAC’s decision rights with respect to consideration of proposed settlements (e.g., whether the NAC must approve or, rather, serves in an advisory role); the membership composition of the NAC to meet any such responsibility it might take on; and many other variables and design choices.

¹⁴ Although the NAC is empowered and charged under FINRA Regulation By-Laws and FINRA Rule 9216 with approving proposed settlements, it has for many years delegated its review and approval authority to FINRA’s ODA, which must approve all settlements. ODA is an office comprised entirely of FINRA Staff professionals that is structured to be independent, most notably from Enforcement itself as well as investigations and any subsequent litigation after an action is authorized. ODA must also authorize Enforcement complaints under FINRA Rule 9211.

The NAC and the NAC’s Review Subcommittee exist pursuant to Article V of FINRA Regulation By-Laws. Among other things, the NAC is authorized to act for the Board with respect to “an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; and a review of an offer of settlement, a letter of acceptance, waiver, and consent [‘AWC’)], and a minor rule violation plan letter.” The NAC has for years had a membership split roughly equally between industry and non-industry members. More precisely, NAC membership is limited to fifteen members, with a majority consisting of “Non-Industry Members,” including at least three “Public Members.” Importantly for purposes of this Recommendation, FINRA Rule 9216(a)(3) states that proposed AWCs – essentially, settlements – are to be submitted to the NAC but permits ODA to accept, or the Review Subcommittee to accept or reject, an AWC on behalf of the NAC, or refer an AWC to the NAC for acceptance or rejection. In practice, pursuant to the delegation, ODA either accepts AWCs (at times with requested modifications communicated to Enforcement Staff) or they are withdrawn – all without direct input from the NAC or Review Subcommittee members.

In addition to this authority to review AWCs, the NAC’s Review Subcommittee may also call a disciplinary proceeding for review. We understand that the Review Subcommittee very rarely exercises this prerogative and does not, absent special circumstances, exercise judgmental oversight of the Enforcement Department’s disciplinary proceedings.

¹⁵ ODA is designed to provide “an independent review of the legal and evidentiary sufficiency of the charges proposed by the staff. ODA also reviews settlements for consistency with the Sanction Guidelines as well as applicable precedent.” See FINRA Regulatory Notice 09-17. This Recommendation contemplates reevaluation of how judgment-based substantive review of the merits could occur or review of whether proposed sanctions or remedial measures align to enforcement priorities or resource allocations envisioned by the Board or senior FINRA management.

Diverse Input, Perspectives, and Expertise

4. **A Deputies Committee to Enhance Inter-Departmental Consultation.** Concurrently with FINRA’s ongoing efforts to restructure its Regulatory Operations function, FINRA should consider forming a committee of senior leaders who report directly to senior management (i.e., “Deputies Committee”) that would meet regularly to ensure prompt identification and earlier escalation of issues for assessment that implicate subject-matter expertise across FINRA Departments, that are considered close calls, or that potentially implicate significant policy questions. We envision this Deputies Committee as an adjunct to FINRA’s existing Regulatory Actions Committee (“RAC”)¹⁶ so that matters and substantive issues warranting inter-Departmental consideration are identified and addressed in a structured manner as early as possible in the enforcement lifecycle.¹⁷ We recognize that the ongoing reorganization of FINRA’s Regulatory Operations structure may obviate aspects of this Recommendation tied specifically to the RAC.¹⁸

A Deputies Committee of the RAC would enhance the existing process, procedure, and venue for the assessment of enforcement matters by a formalized cross-Departmental body and build out a structure for seeking additional input from subject-matter experts within FINRA (but external to Enforcement) concerning specific trading, sales, market, industry, technological, and operational practices. We anticipate that the Deputies Committee would consider a broader array of issues than currently are escalated to the RAC and would be engaged earlier than after an investigation is complete in order to inform the investigation itself, not only the contours of a potential settlement or litigated action. The Deputies Committee should meet regularly with appropriate frequency, and otherwise as warranted.

5. **Additional Inter-Departmental Engagement.** Broadening the perspective of Recommendation 4, FINRA should evaluate whether – beyond a Deputies Committee – there is an opportunity to take additional steps to ensure further formalized engagement on matters by

¹⁶ The RAC is a cross-Departmental committee comprising executive leadership of FINRA’s regulatory programs. The RAC is widely perceived as a useful internal forum at FINRA to evaluate and resolve issues that can implicate different units across FINRA – hence the RAC’s broad-based membership – or otherwise warrant very senior engagement.

The RAC meets regularly to “discuss significant regulatory issues . . . and noteworthy Enforcement actions,” according to its charter. If the RAC is unable to “reach agreement” on any issues before it, then the RAC is to meet with the CEO. We observe that when the RAC gets involved in the enforcement process, it tends to be relatively late in that process – namely, after an investigation is complete (although “novel” issues are to be brought to the RAC sooner) – and with respect to select issues.

¹⁷ As a variation of this, FINRA might, in the alternative, determine that it would be more constructive to expand the remit of the RAC so that it is involved earlier in a larger set of matters than is the RAC’s current practice under its charter. In that case, the RAC, in order to shoulder its additional responsibilities, might decide to appoint something akin to a Deputies Committee to support the RAC’s efforts, resulting in approximately the same outcome as the Recommendation provides for.

¹⁸ However, we believe that the type of one-level-down body this Recommendation contemplates can be expected to facilitate greater and more timely coordination among disparate functions within a large organization like FINRA, especially when senior leaders have substantial operational demands on their time. Accordingly, we would encourage incorporating this concept in some form into the decisional structures under consideration as FINRA continues assessing Regulatory Operations.

those with relevant subject-matter expertise in Departments other than Enforcement. This would include whether there should exist a more structured, regularized, and documented process (which we understand is FINRA’s practice with respect to some types of matters) whereby a liaison from other Departments should review AWCs (or disciplinary complaints) before they are finalized. We recognize that FINRA’s ongoing reorganization of Regulatory Operations overlaps with aspects of this Recommendation.

Due Process and Fairness

6. **Member Firm Engagement at the Time of Referral.** Member firms should be given further opportunity – building on a process that Enforcement recently enhanced – for meaningful engagement at the time a matter is referred to Enforcement.¹⁹ At the time of referral to Enforcement, respondents should be informed in writing of the referral and the names and titles/roles of the Enforcement Staff assigned to the matter.²⁰ Respondents also should: (a) be informed, in reasonable detail, not only of the nature of the Staff’s concerns, but also the potential violations that prompted the referral;²¹ and (b) have a meaningful opportunity (in a structured setting) to present their views and engage on the merits of the basis for the referral, including with participation by non-Enforcement subject-matter experts as warranted – all at an appropriate level of seniority.

¹⁹ In 2025, Enforcement implemented a valuable “kickoff” process at the time of referral that we understand has been well-received. This Recommendation builds on this progress by affording parties “in enforcement” a more fulsome opportunity to engage on the facts and the law before an enforcement matter starts to take final shape with enforcement decisions being taken by Enforcement Staff.

This Recommendation does not address how FINRA’s examination, surveillance, or other regulatory functions evaluate and refer specific matters to Enforcement. That is a matter beyond the scope of our review. To the extent FINRA considers overlapping or complementary procedural reforms in this area in connection with the Regulatory Operations reorganization, we note the animating purpose of this Recommendation is to accelerate and enhance existing opportunities for member firms to engage with Staff when it makes preliminary decisions about potential enforcement matters.

²⁰ This Recommendation recognizes that under current FINRA practice, consequential decisions and preliminary conclusions often are being made by the Staff by or at the time of a referral, and it also recognizes that the Enforcement Department, as has been explained to us by FINRA, typically does not generate its own cases. Indeed, at the time of referral some proposed enforcement actions will have been the subject of informal, inter-Departmental assessment – if not decision making – as to possible charging theories, potential respondents, possible regulatory responses, and the like. When evaluating the merits of a matter – even when preliminary in nature – the evaluation should be made with the benefit of input from (and advocacy by) the member firm whose conduct is at issue. The contemplated process at the time of referral would not replace the formal Wells notice and submission process toward the conclusion of Enforcement’s review.

²¹ The engagement envisioned would include explaining the general surveillance and investigative approach and underlying assumptions FINRA used in assessing trades, conduct, or activity as (potentially) violative, absent good cause to believe that the member firm might abuse or misuse such information and without revealing anything that might compromise FINRA’s surveillance or investigative program. Likewise, FINRA should explain, in reasonable detail, any quantitative methodology and supporting analytics it used in determining a potential violation occurred – again, unless there is good cause not to reveal such information at that time.

7. **Wells Process Improvements.** FINRA’s Enforcement Department should update, formalize, and publicly publish enhanced Wells procedures in light of experience to bolster due process, transparency, and fairness, among other things.

We believe that member firms facing a potential disciplinary action should not only be provided with a reasonably detailed explanation of FINRA’s theory of the case and legal analysis given FINRA’s view of the facts, but also an appropriately meaningful opportunity to formally respond to the contemplated action prior to its advancing to an AWC or litigated action.²² Due process, transparency, and fairness require this, and it is the underpinning rationale for the long-established Wells process that FINRA has a version of. Plus, it is critical for FINRA itself to ensure it fully understands and appreciates where a potential respondent stands on the facts, the law, and suitable resolution (even if there is a violation) to assist FINRA in determining how best to proceed. The value of a robust, pre-settlement/pre-complaint process such as this is amplified because there are practical constraints that can limit a respondent from contesting a disciplinary proceeding through a hearing, subsequent appeals to the NAC and the Board, and then ultimately to the SEC, before accessing an external, federal judicial forum.

The following features – elements of which FINRA has already adopted to one degree or another – are illustrative of an enhanced Wells process that FINRA should ensure are appropriately addressed and consistently followed in building upon its current Wells process:

- a. It should be emphasized in the Enforcement Manual²³ that the purpose of the Wells process (including the associated Wells call) is to afford potential respondents a fair, equitable, and meaningful opportunity to respond and advance their position. Among other things, this helps to ensure FINRA, with the benefit of a potential respondent’s advocacy, reaches an appropriate outcome.
- b. The Enforcement Department should encourage Staff to offer “reverse proffers” and adopt other types of “open jacket” practices at or around the time of the Wells call, which typically accompanies or precedes the formal Wells notification letter that memorializes the Enforcement Staff’s preliminary enforcement recommendation. Potential respondents should be appropriately apprised of the Staff’s views as to the facts, the law, and the rationale for any proposed resolution, including sanctions.²⁴

²² The overwhelming majority of disciplinary matters involving member firms are resolved following discussion and negotiation with Enforcement Staff.

²³ See Recommendation 8.

²⁴ In many matters, the investigative file may consist entirely of documentation and information received from the member firm itself. In other instances, the Staff may have requested and received testimony, documentation, trading data, and other information from counterparties, customers, and other third parties. We, therefore, expect that, in practice, opportunities and obligations under this Recommendation will vary with the type and complexity of the matter giving rise to the Wells notice. For that reason, we have refrained from specifying with particularity the types of materials within the investigative file that should be shared or described to potential respondent firms and their counsel, but underscore that a potential respondent should have fair notice of the Staff’s views and be afforded appropriate access to the record (recognizing that confidentiality and other privacy interests may need to be preserved), which can be instrumental in a firm’s efforts to engage and advocate effectively on its behalf.

- c. Potential respondents and their counsel should be provided an opportunity to inspect all transcripts (including exhibits) of on-the-record testimony by any and all witnesses taken at any time during the course of the FINRA Staff’s investigation. FINRA Staff should consistently ensure that these materials are ready and available for review (pursuant to an effective document-share system or on an in-person inspection basis) immediately upon communication of a Wells notice.
- d. Absent extraordinary or exigent circumstances, Wells submission deadlines should be no fewer than 30 days – a change we are encouraged FINRA recently made. Although the Enforcement Staff customarily grants reasonable extension requests, we express a strong preference for setting initial deadlines that reflect realistic expectations for the time needed to prepare a submission in response to the Wells notice. Deadlines should also take into account customary holiday or year-end seasons, as well as personnel changes at member firms or counsel over time.
- e. Appropriately senior individuals within Enforcement should attend Wells meetings.
- f. Post-Wells meetings with Enforcement Department leadership should be welcomed and invited.²⁵
- g. Consistent with due process, transparency, and fairness, during post-Wells meetings or otherwise, Enforcement Staff should explain to potential respondents and their counsel, in appropriate detail, the rationale behind any final decision to go forward with a proposed enforcement action, the sanctions and remediation measures sought and the basis therefor, and the extent to which cooperation credit was awarded or denied.

Transparency

8. **Publication of an Enforcement Manual.** FINRA’s Enforcement Department should revise and publish for the public an updated “Enforcement Manual” to provide more

²⁵ As a matter of course, Enforcement Department leadership, including those responsible for approving recommendations for bringing disciplinary proceedings, should expressly welcome participation in post-Wells meetings with potential respondents, with an inclination toward “taking the meeting” – mindful that there are judgments to be made that are very case-specific regarding whether meeting is justified.

In addition, as appropriate, representatives from other FINRA Departments should be invited to participate in post-Wells meetings, especially when a matter implicates: (a) genuine issues of rule interpretation, challenging policy questions, emerging or novel market practices, new legal theories, difficult issues or close calls regarding compliance or supervisory obligations, and other issues that are of the sort that raise programmatic considerations beyond the Enforcement Department; or (b) models, assumptions, or analyses or technological or operational issues with respect to which non-Enforcement professionals can be uniquely knowledgeable given their areas of expertise outside the enforcement context.

transparency about the enforcement process generally and to promote consistency of approach and practice and associated accountability.²⁶ These revisions should include, among other things, updates that account for FINRA's implementation of any accepted Recommendations, and should factor in input from the CEO, the CROO, the Chief Legal Officer, and other appropriate FINRA leadership – including, as appropriate, the Board.

9. **Publication of Enforcement Workflows.** FINRA should provide greater transparency to member firms about the steps FINRA takes (pre- and post-referral of a matter to Enforcement) that comprise the internal lifecycle of a matter, including, among other things, the start and progression of investigations, the transition of matters from one Department to another, formal referrals to Enforcement, and reviews and escalations within Enforcement. As part of this, FINRA should (a) develop workflow diagrams that show the process step-by-step in an easy-to-follow manner and make them available in an easy-to-find location (e.g., FINRA's website), and (b) review its policy and procedure documentation of processes and practices to ensure that steps in the enforcement process (broadly speaking) are appropriately documented, such as in the Enforcement Manual.²⁷

10. **Greater Access to Complaints, Decisions, Settlements, and Other Publicly-Available Disciplinary Materials.** FINRA should provide enhanced accessibility and searchability of materials currently posted in its Disciplinary Actions Online Database.

Ideally, FINRA would take steps to make available all such archived material and new disciplinary actions to one or more of the third-party legal research platforms most commonly used by member firm compliance and legal departments and securities practitioners.

Information Requests and Testimony

11. **Improvement of Information Request Processes and Practices, Especially as to Rule 8210.** FINRA's Enforcement Department should update, implement, and publicly publish (such as in a public-facing Enforcement Manual) revised policies and procedures governing the use of information requests generally, and the use of FINRA Rule 8210 authority in particular to make information requests. Building on Enforcement's recent improvements to the Rule 8210 process, further updates – elements of which FINRA has already adopted to one degree or another – should include:

- a. Consistent with Recommendation 15, FINRA should track in a centralized and structured manner information requests – whether or not issued pursuant to Rule 8210 – so that sequential or repetitive requests for previously-provided documents

²⁶ The Enforcement Manual that the SEC has published – and revised in February 2026 – is a useful reference, acknowledging, as we do, that FINRA is an SRO.

²⁷ Enforcement has already begun to take steps in this direction, with a basic diagram and description of the enforcement process posted on FINRA's website.

and other information are not sent to member firms without a valid reason for seeking another production.²⁸

- b. FINRA should ensure that an individual at an appropriate level of seniority is required to approve information requests issued by the Enforcement Department.
- c. Information requests issued by the Enforcement Department should be the subject of pre-issuance consultation by FINRA with member firms to discuss the objectives (and corresponding scope and timing) of the contemplated request as warranted to keep the scope and timing of requests centered on relevant information, foster consideration of different avenues or means for providing the requested information, and alleviate unnecessary burdens. We acknowledge that this must not compromise valid enforcement efforts and that FINRA must retain the ability to issue subsequent requests if more information is needed.
- d. Deadlines for responding to information requests issued by the Enforcement Department should reflect a reasonable assessment by Staff – informed by pre-issuance consultation with the party or parties receiving the request – of the time to undertake the efforts that may be required to comply. Reasonable deadlines can enable the sourcing, review, and provision to Enforcement of more useful responses as compared to timeframes that do not reflect relevant complexities, such as the need to gather and collate data and documents from disparate systems and archives.
- e. FINRA should adopt enhanced precautions to ensure that information requests by the Enforcement Department consistently avoid inappropriate practices, such as (i) acting as contention interrogatories or requests for admission,²⁹ (ii) mandating that the member firm conduct a counsel-led internal review as an alternative to Staff-led investigative efforts, (iii) requesting information that unreasonably

²⁸ The objective of this Recommendation is to enable Enforcement Staff to be able to readily check if documents and other information that may be needed have been previously supplied to FINRA before formulating and issuing a new information request for the same material. Together with the pre-issuance consultation provided for in Recommendation 11.c, Enforcement Staff should be able to reduce redundant or overlapping information requests. We believe that the purposes of this Recommendation can be met without having to create a permanent database, catalog, or repository of all historical requests and information provided to FINRA; and we do not suggest establishing sweeping new internal recordkeeping obligations for FINRA Staff to meet when it comes to ordinary course requests issued during examinations and surveillance oversight activity. In addition, we recognize that it may be appropriate for FINRA to restrict – for example, consistent with confidentiality obligations, data management, and information security – who can search or gain access to certain information and systems, which could affect how this Recommendation (along with Recommendation 15) is implemented.

²⁹ Requests for written statements by witnesses – such as statements by salespersons, traders, or supervisors about specific transactions – can serve a variety of legitimate purposes and often streamline investigative efforts and avoid the need for more costly and time-consuming approaches. On the other hand, such requests should generally not be used to require that member firms or individuals memorialize recollections, explain circumstances surrounding an event, or state positions as to legal or factual defenses at an early stage in an investigation without the benefit of a developed factual record or meaningful opportunity to refresh memories of long-past events.

conflicts with attorney-client privileges and work product protections,³⁰ (iv) issuing requests solely or primarily to demonstrate activity in otherwise dormant investigations, or (v) issuing requests after the Wells stage without a clear investigative purpose.³¹

- f. FINRA should assess the adequacy and effectiveness of existing policies and procedures to ensure that they (or, as appropriate, a new rule) clearly and appropriately provide for how to address, in a manner consistent with legal ethics and professional responsibility, the inadvertent production by potential or actual respondents of communications, documents, and other information that is privileged. As part of this effort, FINRA should address (i) whether and how the relevant provisions set forth in the Federal Rules of Civil Procedure, as amended from time-to-time, and state bar ethics rules and opinions addressing the inadvertent production of privileged communications, documents, and other information do (and should) apply in the context of FINRA investigations and enforcement matters, and (ii) whether and how a formalized mechanism to resolve the status of disputed privilege claims relating to inadvertently produced communications, documents, and other information should be implemented.³²

12. **A Forum for Challenges to 8210 Information Requests.** To allow member firms to challenge information requests issued by FINRA Enforcement pursuant to Rule 8210 that are perceived to be inappropriate by virtue of their scope or the burdens they are reasonably expected to impose, FINRA should adopt a procedural mechanism that would permit member firms to challenge, subject to appropriate safeguards and procedural requirements and an exception for exigent circumstances, the appropriateness of such requests issued pursuant to Rule 8210 against a standard of review that FINRA establishes.

This Recommendation contemplates a mechanism that involves a neutral decision maker, such as a hearing officer in the Office of Hearing Officers (“OHO”) or a newly-created FINRA officer (or comparable role) with appropriate expertise, including in discovery dispute resolution and procedure (such as former state or federal judges). Securities regulation experience also would be relevant.

Such a mechanism is long-established in criminal and civil contexts, as well as administrative settings. For example, we envision that such proceedings for FINRA could draw on experience under Federal Rule of Criminal Procedure 17(c), which recognizes both the

³⁰ For example, absent special circumstances, the Staff should avoid the use of Rule 8210 requests to gather information about who prepared, contributed to, reviewed, or edited narrative responses.

³¹ For example, Enforcement Staff may need to gather documents and other information concerning legal or factual defenses not previously known or advanced prior to the receipt of the Wells submission or any post-Wells meeting. However, post-Wells information requests should not be used without good cause (e.g., should not be used to impose unjustified costs or burdens or to obtain documents solely for use in a contested disciplinary proceeding if the matter were to proceed to litigation).

³² This should include consideration of whether a mechanism analogous to that contemplated by Recommendation 12 could or should be utilized in the event that the status of disputed privilege claims cannot be resolved through informal processes.

importance of investigative subpoenas and the importance of providing a pre-complaint opportunity to assert challenges related to perceived unreasonable and oppressive terms, including requests that may impinge upon applicable privileges or privacy interests.

We appreciate that any implementation of this Recommendation would need to address the potential for frivolous challenges, misuse as a delaying tactic, or routine resort to what is envisioned as an extraordinary process limited to instances involving genuine risk of substantial harm, extraordinary costs, and unjustifiable burdens. For example, the mechanism could be designed so that resort to such proceedings could be denied in the event of exigent circumstances and could be permitted only after good faith participation in traditional escalation processes – including escalation up to the Head of Enforcement – have failed to address the perceived abuse. In most instances, decisions could be rendered “from the bench,” so to speak, and without appeal. In addition, any such proceeding could require the payment of an administrative fee to cover costs and could allow the presiding officer to address frivolous challenges or other abuses of the process itself, perhaps with sanctions.

We recognize that FINRA may wish to gain experience with the efficacy of the other Rule 8210 reforms already implemented and contemplated before deciding whether – and in what form – this Recommendation should be adopted. In any event, we recognize that the FINRA Staff retains authority under existing FINRA rules to insist on prompt compliance with Rule 8210 requests, and nothing in our Recommendation is intended to diminish the importance of this authority to a variety of FINRA programs.

13. Practices Concerning Testimony. We recognize that testimony conducted by the Enforcement Department plays a critical role in FINRA’s enforcement program. For very good reasons, Enforcement Staff are empowered to control the record, including the time, place, and manner of on-the-record interviews (testimony) (“OTRs”). Witnesses appearing for OTRs are obligated to cooperate and testify truthfully under FINRA rules and are subject to prohibitions against perjury. Counsel for witnesses are similarly subject to state bar ethics and professional responsibility obligations governing their conduct.

Enforcement Department attorneys conducting OTRs also bear a heavy responsibility for conducting themselves in a manner consistent with the highest standards of the profession and as representatives of a membership organization with enforcement authority and other regulatory responsibilities. This is so even if witnesses or their counsel engage in antagonistic behavior. Enforcement Staff have considerable discretion when conducting pre-complaint investigative testimony precisely because it is in the nature of factfinding and not incidental to an adversarial, contested disciplinary proceeding. Disrespectful behavior of the sort associated with combative civil depositions should be scrupulously avoided.

Accordingly, FINRA’s Enforcement Department should update, implement, and publicly publish (such as in a public-facing Enforcement Manual) enhanced policies and procedures governing the use of on-the-record interviews. Among other things, the value of the policy and procedure enhancements this Recommendation contemplates – elements of which FINRA has already adopted to one degree or another – is to further set and clarify expectations, help ensure witnesses are properly informed consistent with meeting the purpose of OTRs, and achieve more

consistency and promote oversight regarding when, how, and by whom OTRs are conducted. Enhancements should provide for:

- a. As a general matter, on-the-record testimony should be reserved for investigations that have either been referred to the Enforcement Department or are of a nature or at a stage that warrant the formality of sworn testimony, with questioning led or supervised by an attorney.
- b. Whether conducted on an in-person or virtual basis, attendance and participation by numerous Staff members at OTRs should be reasonably limited.³³
- c. During virtual OTRs, witnesses should be able to review document exhibits in the same manner as if the OTR were occurring in person. Accordingly, arrangements should be made to ensure that witnesses can reasonably access physical copies.
- d. Transcripts of on-the-record testimony should be available for purchase by a witness or counsel immediately following testimony unless good cause is shown, consistent with FINRA Rule 8210(f). Witnesses (and their counsel) should always have an opportunity to review testimony transcripts (including exhibits), even if they are withheld from purchase for good cause, as is the occasion afforded to witnesses in SEC investigations.³⁴ FINRA Staff should adhere to a pro-release presumption that reserves “good cause” denials for specific instances in which there is a serious, credible, or otherwise unavoidable risk of unethical or otherwise inappropriate conduct by a witness or counsel. Access to transcripts (and exhibits) for inspection and purchase should not be made subject to conditions that are not expressly provided for in FINRA Rule 8210(f).

14. Participation by Enforcement Pre-Referral. Active attendance and participation by Enforcement Staff in meetings and communications with member firms that are part of pre-referral exams, reviews, and investigations should be avoided, absent exigent circumstances.

We understand that Enforcement Staff sometimes attend and participate in meetings and communications with member firms pre-referral, including to achieve certain efficiencies. Although participation by Enforcement Staff in matters pre-referral has the potential to shape referral (or non-referral) and disposition decisions, reduce overlapping or redundant information requests, and speed-up the ultimate resolution of matters, we believe that such participation should be informal, consultative, and largely among FINRA Staff themselves.³⁵ Active and

³³ Absent special circumstances, attendees on behalf of the Enforcement Department generally should be limited to no more than those reasonably necessary to achieve the objectives of the OTR. As for the number of professionals who attend from Enforcement, we have a maximum of three in mind as a guideline, one of whom would be identified as the attorney responsible for questioning the witness.

³⁴ See FINRA Rule 8210(f); *see also* 17 C.F.R. § 203.6.

³⁵ We understand from discussions with FINRA that any such pre-referral consultation that Enforcement Staff engage in would not be designed or intended to result in the functional shift of initiative and decision making to Enforcement Staff pre-referral or to obscure that a matter essentially is “in enforcement” even if it has not yet been referred to the Enforcement Department.

direct involvement by Enforcement Staff with a member firm pre-referral (or where a member firm perceives other FINRA Staff to be working at the direction of Enforcement Staff) can lead to a perceived need by member firms to retain outside counsel and to treat the matter as an adversarial enforcement matter even if it has not yet been (and may never be) formally referred to Enforcement. For example, the identifiable presence and active engagement by Enforcement Staff – especially in the context of exams – can have the unintended consequence of posturing even an ordinary course examination as being “in enforcement,” fundamentally changing the dynamic between the member firm and FINRA in ways that can consume resources, create a more enforcement-like atmosphere, and make it more difficult to reach an effective resolution through non-enforcement alternatives.

We acknowledge that FINRA’s continued Regulatory Operations reorganization could have a bearing on how to implement this Recommendation most effectively.

Coordination

15. Centralization and Coordination of Information Requests and Status Tracking. FINRA should ensure that there is an appropriately centralized function with suitable seniority, experience, and authority that assumes greater responsibility for: (a) monitoring, tracking, and coordinating FINRA requests for information from member firms (whether or not requested pursuant to FINRA Rule 8210); (b) tracking the status of all open examinations, reviews, and investigations wherever occurring within FINRA, along with matters referred to Enforcement; (c) addressing member firm inquiries and providing updates on the status of items and matters; and (d) escalating issues. In short, these assigned professionals should serve as a single point of contact across FINRA Departments who are a resource for member firms to engage with to promote efficiency and transparency and to facilitate working through differences.³⁶

As envisioned, the function would, among other things, provide a structured process administered by individuals with assigned responsibilities to ensure that, before an information request issues to a member firm, input is received from a senior FINRA professional knowledgeable about the member firm, its business, its risk profile, and its responses to prior inquiries when crafting requests for information. Subject to abiding by confidentiality obligations, access restrictions, and information security standards, the function would generally be expected both to know whether requested materials are already in FINRA’s possession because of a prior request (e.g., written supervisory procedures for various business units) and whether certain requests are inapposite (e.g., related to a nonexistent business line at the member firm).

This Recommendation assumes that ongoing efforts to centralize delivery and tracking of information requests through the Gateway or other systems at FINRA will be accomplished. To that end, to enable what this Recommendation provides for, it may require building or enhancing

³⁶ We recognize that this Recommendation overlaps with FINRA’s ongoing restructuring of its Regulatory Operations function and that aspects of what this Recommendation provides for may best be left to that restructuring or perhaps even obviated by it.

certain case/matter management systems.

16. **Minimizing Enforcement Duplication.** Regulatory requirements in different domains sometimes overlap or are adjacent, serving the same or comparable policy objectives. As a result, related facts and circumstances might implicate multiple regulatory regimes that could spur investigative activity or even prosecutorial interest. It is possible, for example, that certain securities trades or other financial transactions could garner attention from the SEC, the Commodity Futures Trading Commission (“CFTC”), the Financial Crimes Enforcement Network (“FinCEN”), the Department of Justice (“DOJ”), and state regulators, as well as FINRA and other SROs. While concurrent enforcement efforts can be warranted, there is the potential for duplication that can cause certain inefficiencies and can require valuable resources that could be committed to other efforts, including other investigations of potential violations.

We understand that FINRA’s Enforcement Department, in deciding whether (and, if so, how) to pursue a matter, takes into consideration concurrent enforcement efforts by governmental authorities, mindful that unnecessary duplication is worth minimizing and that it can be appropriate for FINRA to defer in important respects depending on the context.

We recommend that FINRA review and, as appropriate, update its policies and procedures to avoid duplicative enforcement efforts that do not sufficiently advance FINRA’s objectives as an SRO beyond what would be accomplished where the SEC, the CFTC, FinCEN, the DOJ, or state regulators advance a similar matter. Variables such as the scope of the underlying facts and circumstances, the products and transactions involved, the individuals and entities involved, the nature of any potential violations, the relevant FINRA rules and guidance that are implicated, the potential type of relief that could be sought, and the information available to FINRA about other matters are instructive to factor in. Particularly key, we think, is for FINRA to evaluate what the additional benefit would be (e.g., a different type of remedy that promotes enhanced compliance) that distinguishes the practical effects of a FINRA action from any that governmental authorities might decide to bring concurrently so that the FINRA action is additive.

Timeliness and Efficiency

17. **Start-to-Finish Matter Tracking.** FINRA should enhance its tracking of enforcement matters (e.g., by priority, complexity, subject matter, FINRA rule, resolution, source, etc.) – including notable milestones in the enforcement process – and provide greater transparency for management and oversight purposes in relation to tracking progress against target time periods (milestones) for completion and other relevant goals, including keeping potential and actual respondents apprised of status on an appropriately frequent basis and with appropriate detail.³⁷ To facilitate this, FINRA should finalize its efforts to enable single-matter tracking from the earliest point in the lifecycle of a matter (e.g., an exam or surveillance-related investigation) across functions (i.e., Departments) to better understand the pace and age of matters (including

³⁷ We understand that FINRA has made efforts to mitigate aging and dormancy, which are reflected in its current Enforcement policies and procedures.

factors and variables affecting the same), from start to finish. This information could feed into relevant analytics that could better enable FINRA to address aging and dormancy concerns and take appropriate proactive steps to advance efficiency.

18. Adoption of Limitations Periods. FINRA should adopt appropriate limitations periods for enforcement matters, subject to reasonable exceptions as are well-established under other bodies of law (e.g., doctrines of continuing violation and equitable tolling) as well as provision for tolling agreements that potential respondents may agree to under specific circumstances.

Congress, the SEC, and SROs – as well as courts – have long expressed concerns about the fairness of years-long delays before the initiation of an enforcement action or disciplinary proceeding involving alleged noncompliance with the federal securities laws or SRO rules. These concerns are evident through the enactment of limitations periods applicable to governmental actions, recognized constraints on the permissibility of SRO disciplinary proceedings when delays render them “inherently unfair,”³⁸ and by the customary exercise of prosecutorial discretion.

Broadly speaking, these constraints share common objectives: “[T]o ‘promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’”³⁹

Under relevant authorities, the extent to which delays of varying duration between the alleged misconduct and the initiation of SRO disciplinary proceedings implicate fairness concerns depends on a facts-and-circumstances analysis that lacks clarity and predictability. We recommend that FINRA adopt specific time periods within which an enforcement action must be brought to address the policy objectives at issue and provide a measure of certainty.

We recognize that views may differ as to specific time periods and that implementation questions will arise (e.g., how a doctrine of continuing violation may apply, how concepts of equitable tolling should be followed, and how tolling agreements will be permitted). That said, our view is that, to start, FINRA should observe the corresponding federal statutes for all charges FINRA considers that are based on underlying violations of the federal securities laws or FINRA rules that incorporate the federal securities laws by reference, even if FINRA is not bound by those periods as a matter of the federal securities laws.⁴⁰ In other contexts where an alleged violation is without any specific tie to the federal securities laws, as a general matter and again with certain exceptions, we think one reasonable approach would be for FINRA to adopt and

³⁸ See *In re Jeffrey Ainley Hayden*, Ex. Act Rel. No. 42,772 (May 11, 2000) (finding unfairness when the NYSE’s disciplinary proceeding was commenced “approximately fourteen years after the first act of misconduct and over six years after the last incident”). Although not subject to any federal statute of limitation, SRO disciplinary proceedings may not involve delays of such length that they would render the defense of such a proceeding inherently unfair.

³⁹ *Gabelli v. SEC*, 568 U.S. 442, 448 (2013) (citation omitted).

⁴⁰ Subject to the same kinds of exceptions as are available under the federal securities laws in SEC enforcement actions.

follow a limit of five years, with perhaps incrementally longer periods for matters involving scienter-based fraudulent or manipulative conduct where there has been customer loss.

Settlements, Resolution, and Advancing FINRA's Mission

19. **Further Encouragement of Rapid Detection and Resolution Pre-Referral to Enforcement.** FINRA should continue to embrace and expand its “Rapid Remediation” program,⁴¹ the use of surveillance “report cards,”⁴² and similar approaches – which can be efficient and effective alternatives to formal enforcement actions in appropriate instances – that identify, address, and resolve compliance concerns as quickly and efficiently as possible. These types of approaches promote improved compliance on the front end, which can prevent issues from arising in the first place or worsening. Therefore, FINRA should (a) evaluate if additional programs for resolving matters outside the formal enforcement context are warranted to develop and implement, and (b) track its efforts to enhance compliance through alternatives to formal enforcement actions and publish relevant information – perhaps the number and types of matters resolved through Rapid Remediation and comparable initiatives – coincident with Monthly Disciplinary Actions reports or as part of other periodic reporting.⁴³

20. **Opportunities for Expedited Resolution of Technical Regulatory Matters Post-Referral to Enforcement.** Informed by the value of the types of non-formal enforcement approaches mentioned in Recommendation 19, FINRA should evaluate if there are more streamlined frameworks and processes, combined with proportional relief, that it could develop and implement as part of its enforcement program to expedite the resolution of certain types of matters after they have been referred to Enforcement, such as those of a more technical nature that do not involve investor harm and where the underlying compliance issue has been redressed already or where there was an honest mistake and a demonstrated good faith effort to comply.

21. **Additional Pre-Resolution Engagement on Remediation.** Enforcement Staff should be encouraged, throughout the course of a matter, to engage with a member firm about the Enforcement Staff’s views of activities and practices – and related policies and procedures – that comport with compliance requirements, particularly when the potential respondent firm asks the Staff for its views. It is important for potential respondents to have a proper understanding of the Enforcement Staff’s perspectives, starting early-on once a matter has been referred to Enforcement. Accordingly, in working toward resolving a matter with a member firm, it is useful for the Staff to explain its expectations to the firm in the interest of transparency and enabling constructive dialogue. This also would allow member firms to avoid what could be potential continuing violations and to design and take remedial action when appropriate. We recognize that there may be sensitivities around this type of engagement, as concerns may arise about informal guidance, the risk of regulation by enforcement (which should be avoided), and remedial actions that may be construed as an acknowledgement of wrongdoing. But we are

⁴¹ See <https://www.finra.org/media-center/blog/expanding-rapid-remediation>.

⁴² See <https://www.finra.org/compliance-tools/report-center>.

⁴³ See also *supra* note 9.

confident that both FINRA Staff and member firm professionals and their counsel will be able to navigate any such issues as they work toward resolution of a matter.

22. Credit for Meaningful Cooperation. FINRA should revise its existing guidance on credit for cooperation⁴⁴ by adopting and publishing updated guidance in a Regulatory Notice or a FINRA rule on cooperation credit emphasizing that member firms and individuals may receive credit in a variety of ways.⁴⁵ Among other things, the cooperation should not necessarily have to qualify as “extraordinary” (as it does under FINRA’s current cooperation policy) and should not necessarily be precluded simply because there was a self-reporting obligation under FINRA Rule 4530(b) or because remediation (e.g., improving compliance controls or making investors whole) that a respondent undertook is viewed as more routine, standard, or ultimately required.

FINRA should ensure that adequate transparency exists for member firms and individuals to reasonably understand the nature and degree of credit that is afforded in exchange for different forms of cooperation – reflecting what one might think of as a sliding-scale approach, acknowledging that just as respondents benefit from receiving credit, FINRA benefits from cooperation, such as by conserving valuable resources and achieving quicker results. We relatedly recommend that (a) FINRA evaluate whether to establish a formal internal vetting process (or to leverage the RAC or the Deputies Committee⁴⁶) to support the Enforcement Staff’s assessment of the appropriateness of cooperation credit in the context of specific matters, and (b) AWCs generally contain more fulsome and transparent explanations of cooperation credit that was awarded and the reasons therefor, as that can render cooperation credit more effective in achieving its programmatic goals.

23. Other Reforms Addressing the Resolution of Enforcement Actions. We recommend that FINRA adopt the following reforms addressing the resolution of enforcement actions:

- a. FINRA should limit the use of companion (or so-called “tag along”) charges that a respondent violated FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) based solely on the violation of another FINRA rule that does not itself implicate fraudulent or otherwise unethical conduct as commonly understood.⁴⁷

The requirement to observe high standards of commercial honor and just and equitable principles of trade (under Rule 2010) is important and is widely understood to be rooted in an ethical obligation. Indeed, “disciplinary hearings to

⁴⁴ See <https://www.finra.org/rules-guidance/notices/19-23>.

⁴⁵ For reference, we encourage FINRA not only to reassess for comparison’s sake the SEC’s 2001 21(a) Report on cooperation credit (covering cooperation by entities), the SEC’s 2010 Policy Statement (covering cooperation by individuals), and the SEC’s Enforcement Manual, but also the CFTC’s 2025 Enforcement Advisory (covering cooperation by both entities and individuals) and the CFTC’s subsequent 2026 Enforcement Staff Advisory (covering cooperation by both entities and individuals).

⁴⁶ See Recommendation 4.

⁴⁷ Sanction Guidelines should be conformed to this Recommendation, and consideration should be given to adding interpretive material to Rule 2010 directly.

require compliance with ‘high standards of commercial honor and just and equitable principles of trade’ are ethical proceedings; hence the concern is with ethical implications of [a respondent’s] misconduct.”⁴⁸

Allowing “tag along” Rule 2010 charges – even when the underlying rule violation does not sound in unethical conduct, such as may be the case with certain technical rule violations where there is an absence of bad faith or intent – can at times suggest a deeper ethical or moral condemnation of the conduct at issue than is warranted, thereby confusing customers, counterparties, and other regulatory authorities at home and abroad as to the nature and severity of the violation. Moreover, by allowing Rule 2010 findings to be made solely on the basis of some other rule violation that may not be seen as having an ethical dimension to it, the practice of tag along 2010 charges risks debasing the value of a 2010 charge in other contexts – for example, a deliberate stand-alone 2010 charge brought to bear in the context of abusive market practices or scienter-based misconduct.

- b. As to the applicability of the NAC’s Sanction Guidelines to settled matters, FINRA should ensure that the following is appropriately clear in relevant policies and procedures, Regulatory Notices, the Enforcement Manual, or rules and consistently adhered to:
 - i. The NAC’s Sanction Guidelines apply to settled matters, recognizing – as the Sanction Guidelines do – that the facts and circumstances of any given matter may warrant more or less severe sanctions.
 - ii. As part of the internal review and vetting of enforcement recommendations (including proposed settlements) by FINRA Staff in Departments other than the Enforcement Department,⁴⁹ proposed fines and other sanctions should be accompanied by a reasonably detailed explanation of whether and how they are consistent with the Sanction Guidelines. Prior settlements, while germane, should not be the principal justification for departures upward from published ranges.
 - iii. Enforcement should include a fulsome explanation concerning the “precedent” it has relied on (mindful that settlements are negotiated resolutions that are not tantamount to opinions rendered by independent third-party arbiters, such as state or federal judges), its calculation of the number of alleged violations, and the factors it considered (and how it considered them) in applying the Sanction Guidelines. This should be appropriately communicated to potential settling parties in the interest of due process, transparency, and fairness.

⁴⁸ *In re Timothy L. Burkes*, 51 S.E.C. 356, 360 (1993), *aff’d*, 29 F.3d 630 (9th Cir. 1994).

⁴⁹ *See generally* Recommendations 4 and 5.

- iv. Any departures from Sanction Guidelines and the justification therefor should be documented in a centralized manner and tracked by FINRA and periodically reviewed.
- v. Departures (beyond a certain threshold or in certain types of cases) from Sanction Guidelines should require approval (and such approval should be documented in a centralized manner) from an appropriately senior individual within Enforcement or, in some instances, outside Enforcement (such as the CROO, the RAC, the Deputies Committee,⁵⁰ the NAC, or even FINRA's CEO).
- c. Including appropriate and balanced context in an AWC about the conduct at issue in the underlying enforcement matter helps those reviewing an AWC better understand the whole picture and discern important lessons.⁵¹ Therefore, as a guiding principle, AWCs should provide sufficient context about the conduct at issue to allow readers (including current and potential customers and counterparties, other market participants, and other regulators) to understand what happened and why the sanctions awarded were appropriate. "Context" encompasses, as relevant, not only aggravating factors but also mitigating factors bearing on the actual or perceived nature and severity of the conduct that is the basis of the AWC. This could be accomplished, in part, by allowing settling respondents, at their election, to have their Mitigation Statements made publicly available in the same manner as Corrective Action Statements.

Mindful of the need to preserve FINRA's flexibility of approach in settlement negotiations, including how a particular AWC is worded – and recognizing that settlements often represent a compromise of disputed claims and a desire to constructively resolve them – we are not recommending a prescribed level of detail in AWCs.

- d. FINRA should expand its Minor Rule Violation Plan ("MRVP") to cover additional rules and update the MRVP to increase fine levels to facilitate (including expedite) resolutions of violations that, for example, do not involve egregious behavior, intentional misconduct, or investor harm.

FINRA should undertake an appropriately rigorous review of its current MRVP to determine how to expand the MRVP's scope by (a) making additional rules eligible for the MRVP, and (b) increasing the fine levels for eligible violations from \$2,500 to a level that is more aligned with meeting the MRVP's goal. FINRA may wish to solicit comments on how to update or perhaps more substantially revamp the MRVP to craft a more productive and frequently used framework to resolve matters, such as those that are more administrative or

⁵⁰ See Recommendation 4.

⁵¹ It is not our intent that this Recommendation, if implemented, would in-and-of-itself interfere with FINRA's practice of "neither admit nor deny" settlements.

ministerial in nature or technical rule violations where there was a good faith effort to comply.

- e. The issuance of Cautionary Action Letters by the Enforcement Department should be discussed with recipients in advance, and recipients should be afforded a more meaningful opportunity to engage on a proposed CAL's terms.⁵²
- f. FINRA's Statutory Disqualification Group and the Statutory Disqualification Committee of the NAC should entertain draft membership continuation applications on Form MC-400A from member firms in advance of contemplated settlements with the SEC, CFTC, DOJ, and state regulatory authorities that may lead to a statutory disqualification, such as under Securities Exchange Act Section 3(a)(39). This Recommendation would allow member firms to obtain greater clarity as to potential collateral consequences – in this case, the potential invalidation of a firm's FINRA membership – of a contemplated settlement before it is finalized. In this respect, the Recommendation would align FINRA's membership continuation application process with similar disqualification waiver application processes at the SEC and CFTC.⁵³

Change Management, Assurance, and Continuous Improvement

24. **Training, Controls, and Periodic Reviews.** The following Recommendations are intended to help ensure the efficiency and effectiveness of FINRA's enforcement program over time, taking into consideration, among other things, opportunities for ongoing continuous improvement:

- a. FINRA should determine, as part of implementing the Recommendations, which changes should be reflected in a FINRA rule.
- b. FINRA should develop and administer appropriate training of Enforcement and other Staff that accounts for FINRA's implementation of the other Recommendations. FINRA also should take the opportunity to more holistically

⁵² If a potential recipient of a CAL disagrees with the findings or concludes that a stated Enforcement Staff position or finding cannot be reconciled with the factual record or ongoing business imperatives, the potential recipient should be afforded a reasonable opportunity to engage on the merits with Enforcement, including escalating the matter within FINRA and, if the recipient were to so choose, contesting the findings in a disciplinary proceeding. Because a CAL may be used against a member firm in the future, due process recommends that a recipient have the chance to take issue with a CAL before it is finalized – a step that we understand Enforcement has recently introduced in contemplation of this Recommendation.

⁵³ Assuming reasonable advance notice for processing and favorable consideration of the draft MC-400A application, the member firm would finalize its application on the date of the disqualification and receive notice in writing that (a) the application is satisfactory, (b) the NAC has considered the application, approved the continuation, and will file a corresponding notice with the SEC, and (c) the application will continue the firm's membership pending SEC review. When entertaining such draft applications, efforts should be made by FINRA to assess whether sanctions and remedies to be awarded in the underlying enforcement action suffice for the supervisory plan.

evaluate and, as appropriate, augment the training (and other forms of guidance designed to support FINRA Staff) of those with a connection to the enforcement process, even if not situated within the Enforcement Department as such. In furtherance of that, FINRA's enforcement-related training should continue to encompass not only enforcement-related policies, procedures, processes, and practices, but also industry, securities market, member business model, and related developments of relevance to FINRA's jurisdiction and regulatory responsibilities.⁵⁴

- c. FINRA should consider (and adopt, as appropriate) means and mechanisms of enhancing its documentation of material steps throughout the lifecycle of an enforcement matter.
- d. FINRA should evaluate and implement what it determines to be appropriate controls and accountability designed to promote adherence to the Enforcement Manual and relevant policies, procedures, Regulatory Notices, and FINRA rules.⁵⁵
- e. FINRA should establish a procedure for periodically reviewing the efficiency and effectiveness of its enforcement program, as to both its design and operation, without duplicating the work FINRA's Internal Audit team already performs or the oversight the SEC already conducts.⁵⁶

Given the rapid pace of profound technological change underway, we would be remiss if we did not share a final observation concerning FINRA's use of advanced technology: We strongly encourage FINRA to continue evaluating, as we understand it has been, how it can most constructively leverage and deploy technological advances, such as artificial intelligence ("AI"), on its own behalf to assist FINRA in meeting its mission, in addition to overseeing market participants' own use of AI and other technology as it emerges.⁵⁷

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⁵⁴ Updated training could be particularly consequential as part of FINRA's change management process, which is important to implementing Recommendations effectively.

⁵⁵ As a start, this likely would involve a careful consideration of reasonably designed controls that map to provisions in the Enforcement Manual to help ensure that the Enforcement Manual is being observed and followed in practice, with exceptions identified for appropriate follow-up.

⁵⁶ This could include, among other things, specific retrospective reviews of enforcement actions categorized by different types of violations (including instances where no formal enforcement action commenced); walk-throughs with FINRA Staff who actively participate in enforcement to understand prevailing day-to-day practices and experiences more systematically; engagement with stakeholders outside FINRA who have constructive input and perspective to share as to their experience with (and perceptions of) FINRA enforcement; structured reviews of the granting or denial of cooperation credit and application of the Sanction Guidelines; and reasonable testing or other forms of assurance to confirm that the Enforcement Manual and relevant policies, procedures, Regulatory Notices, and FINRA rules are being followed. One of many benefits of such periodic reviews includes identifying opportunities for continuous improvement in meeting FINRA's mission.

⁵⁷ See <https://www.finra.org/media-center/blog/advancing-finras-mission-with-ai-1028205>; <https://www.finra.org/media-center/blog/observations-on-ai-agents>.