



Elaine Mandelbaum  
General Counsel  
Interactive Brokers LLC

May 1, 2026

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

*Re: Regulatory Notice 26-06: Comments on Modernizing FINRA Arbitration Rules, Guidance and Processes*

Dear Ms. Piorko Mitchell:

Interactive Brokers LLC (“IBLLC”) submits this letter in response to the Financial Industry Regulatory Authority Inc.’s (“FINRA”) Regulatory Notice 26-06, which seeks comments on modernizing FINRA arbitration rules, guidance and processes. We thank you for the opportunity to comment on the much-needed modernization of the FINRA Dispute Resolution forum (“FINRA Arbitration”).

IBLLC has been a proud member of the financial services industry for more than thirty years. We provide our customers with automated trade execution and custody services for securities, commodities, foreign exchange, and forecast contracts around the clock on dozens of markets in numerous countries and currencies -- all from a single unified platform. IBLLC is an affiliate of Interactive Brokers Group, Inc. (NASDAQ: IBKR), a member of the S&P 500.

Under FINRA Rule 12200, our customers have the unilateral right to bring claims against IBLLC in FINRA Arbitration, and any pre-dispute arbitration clause mandating another forum would be unenforceable. Historically, FINRA Arbitration has provided a fair, efficient, and cost-effective forum for most disputes. However, in recent years, as customer disputes continue to become larger and more complex, FINRA Arbitration has fallen short in delivering on its cornerstone principles of fairness and efficiency. The current FINRA Arbitration rules, guidance, and arbitrator training have left arbitrators ill-equipped to handle the sort of complex matters -- particularly those involving multiple claimants and/or high-dollar damages claims (including increasingly common requests for punitive damages) -- that customers now frequently bring to FINRA Arbitration. We are encouraged that FINRA has recognized the need to modernize its processes to restore fairness and efficiency to FINRA Arbitration.

This letter addresses three reforms that are necessary to modernize FINRA Arbitration.<sup>1</sup>

---

<sup>1</sup> IBLLC is a member of the Securities Industry and Financial Markets Association (“SIFMA”). We also support the reforms proposed by SIFMA in the comment letter it is submitting to FINRA today. In particular, IBLLC fully adopts and incorporates by reference SIFMA’s comments regarding motions to dismiss.

## I. Preclude Punitive Damages in FINRA Arbitration

Several recent decisions by panels awarding eye-popping punitive damages against brokers have exposed fundamental flaws in the FINRA Arbitration process.<sup>2</sup> These punitive damages awards lacked any clear legal basis, let alone grounding in state law, and highlight how allowing a panel broad discretion to apply vague notions of equity can undermine confidence in the fairness and consistency of FINRA Arbitration.

Under various state laws, punitive damages are available to plaintiffs only in certain circumstances and only up to a certain amount.<sup>3</sup> Punitive damages are not available for many claims (such as breach of contract); and for claims providing for punitive damages, a plaintiff must meet stringent legal requirements. Indeed, the law typically requires a showing of intentional malice, fraud or reckless disregard.<sup>4</sup>

In addition to a coherent legal framework to provide reasonable limits on the availability and extent of punitive damages, court systems throughout the United States implement procedural guardrails to prevent juries from awarding excessive or inappropriate punitive damages. Every lawsuit is overseen by a judge tasked with assuring that the parties are afforded all available procedural protections and that the jury result follows the law, including the Due Process Clause of the Fourteenth Amendment.<sup>5</sup> If the judge determines that a jury's punitive damages award is grossly excessive or otherwise legally unsupported, he or she has the authority (and often is required by statute) to reduce it.<sup>6</sup> Moreover, if the defendant believes that the outcome was nonetheless unfair or contrary to the law, the defendant can appeal.<sup>7</sup>

FINRA Arbitration has none of these safeguards. There are no judges guiding the panels. There is no appellate process. FINRA does not provide any substantive guidance to its arbitrators on the law of extra-compensatory damages, such as punitive damages.<sup>8</sup> In fact, FINRA does not even require its arbitrators to follow the law. As claimants' lawyers repeatedly point out in arbitration hearings, a FINRA Arbitration panel is free to rule in equity (or at least the panel's view of what "equity" means, because that is not well explained by FINRA, either). It is no wonder that the industry has seen a spate of frankly

---

<sup>2</sup> See, e.g., [https://www.finra.org/sites/default/files/aa\\_documents/23-01342.pdf](https://www.finra.org/sites/default/files/aa_documents/23-01342.pdf) (awarding approximately \$79.5 million in punitive damages against Stifel, Nicolaus & Co., Inc.); [https://www.finra.org/sites/default/files/aa\\_documents/21-00488.pdf](https://www.finra.org/sites/default/files/aa_documents/21-00488.pdf) (awarding approximately \$69.1 million in punitive damages against UBS Financial Services, Inc.).

<sup>3</sup> See, e.g., FLA. STAT. § 768.73 (1) (a) (absent "motivat[ion] solely by unreasonable financial gain" and dangerous conduct and high likelihood of injury known to the responsible party or "specific intent to harm the claimant, an award of punitive damages for negligence generally may not exceed the greater of: "1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or 2. The sum of \$500,000."); NEV. REV. STAT. ANN. § 42.005 (capping punitive damages in the absence of "oppression, fraud or malice"); MISS. CODE ANN. § 11-1-65 (requiring clear and convincing evidence of actual malice, gross negligence, or fraud); TEX. CIV. PRAC. & REM. CODE § 41.008 (capping exemplary damages).

<sup>4</sup> See, e.g., *W.R. Grace & Co. --- Conn v. Waters*, 638 So. 2d 502, 503 (Fla. 1994) ("Punitive damages are appropriate when a defendant engages in conduct which is fraudulent, malicious, deliberately violent or oppressive, or committed with such gross negligence as to indicate a wanton disregard for the rights of others.").

<sup>5</sup> See *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003).

<sup>6</sup> See N.J. STAT. § 2A:15-5.14.

<sup>7</sup> Moreover, both the JAMS and AAA arbitration forums provide parties with the option to agree to appellate procedures.

<sup>8</sup> In addition to punitive damages awards, we also have recently seen more awards of other "extra-compensatory" damages—e.g., treble damages under state statutes (such as elder abuse statutes) and attorneys' fees, regardless of whether claimants have met the stringent statutory requirements for these damages.

shocking multi-million-dollar punitive damages awards. It is unreasonable and unfair to require a broker to defend against an extreme extra-compensatory remedy without the basic protections that courts provide defendants.

Furthermore, the seemingly random nature of punitive damages awards by FINRA Arbitration panels serves no deterrent purpose and does not protect investors in general. Instead of punishing industry actors who willfully or maliciously violate the law, punitive damages awards in FINRA Arbitration merely provide large amounts of compensation to claimants' lawyers and windfalls to the clients lucky enough to be in the right place at the right time (often regardless of the actual merits of their case). A punitive damages award issued by an arbitration panel with no industry experience, and that appears untethered to the facts or the law, delivers no coherent corrective message to the industry. It only creates confusion and increases costs for brokers and, ultimately, their clients.

If a panel believes that a broker's conduct concerning a client warrants punishment, FINRA Arbitration procedures already permit the panel to refer the broker to FINRA Enforcement. FINRA has a robust enforcement mechanism that can investigate the broker's conduct and impose discipline on the broker if warranted.

For all of these reasons, the awarding of punitive damages should not be allowed in FINRA Arbitration.

## **II. Allow Brokers to Contract Out of FINRA Arbitration for High-Dollar Claims**

Brokers should be permitted to contract out of FINRA Arbitration for high-dollar claims that the forum has proven to be ill-equipped to handle. In certain circumstances, these high-dollar disputes will require fact-finders with subject matter expertise and experience to navigate complex procedural and substantive issues. Retail customer cases that reach a high-dollar amount, like \$5 million, are often "mass arbitrations" where claimants' attorneys combine sometimes dozens of claimants into one large arbitration. These types of cases involve significant logistical challenges (such as long hearings with numerous witnesses and extensive discovery) that FINRA rules are not designed for and most FINRA arbitrators have no experience handling.<sup>9</sup> In high-dollar disputes, a panel error -- such as misapplying the law or misinterpreting industry practice -- can impose significant and unjustified monetary penalties on respondents.

FINRA can and should address these inequities by amending Rule 12200 to permit firms to provide for other forums (including other arbitration forums and state and federal courts), with more sophisticated and highly-qualified arbitrators or judges, for cases seeking damages (on an aggregate basis) greater than \$5 million.<sup>10</sup>

## **III. Amend Rule 12403 to Again Require an Industry Panelist in All Cases**

Prior to 2011, three-person FINRA Arbitration panels included at least one industry arbitrator, who had either worked directly in financial services or as an attorney, accountant or other professional for financial services clients. Including an industry member guaranteed that at least one panelist had sufficient knowledge and sophistication to understand the complex issues that non-industry arbitrators might find unfamiliar or difficult to parse.

---

<sup>9</sup> Moreover, as discussed in Section III, industry expertise among selected panelists has dwindled.

<sup>10</sup> FINRA's stated concern that non-FINRA forum selection clauses could prevent customers, especially those bringing small claims, from pursuing relief in FINRA arbitration is not applicable to large, multi-claimant or high-dollar cases. See FINRA Notice to Members 16-25.

FINRA's amendment to Rule 12403, which allows parties to strike all industry arbitrators from the panelist slate, eliminated baseline expertise that benefitted panels. Now, claimants strike, as a matter of course, highly qualified individuals based solely on past industry affiliation. As a result, FINRA Arbitration panels often lack basic familiarity with the financial industry and its rules, regulations and practices.

By effectively eliminating industry professionals from the arbitrator pool, FINRA now must fill in the arbitrator ranks with increasingly inexperienced and unsophisticated applicants, further diluting the pool. It is unreasonable to expect individuals (no matter how successful they may be in their chosen fields) to decide complex margin and options trading matters, for example, with no relevant industry background and without the input of a single industry professional as a co-panelist.

Accordingly, FINRA Rule 12403 should be amended to require an industry panelist, to guarantee a minimum level of industry knowledge on panels. In addition, arbitrator compensation should be increased, especially in more complex cases, to retain qualified industry panelists.

\* \* \*

We again thank you for the opportunity to submit these comments and look forward to the implementation of changes that will make FINRA Arbitration a fairer and more efficient forum.

Sincerely



Elaine H. Mandelbaum