



**Richard E. Pullano**  
Vice President and  
Associate General Counsel

Direct: 240-386-4821

September 22, 2023

Mr. Devin Ryan  
Assistant Director, Office of Chief Counsel  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Mr. Moshe Rothman  
Assistant Director, Office of Clearance and Settlement  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE: FINRA Fingerprint Plan**

Dear Messrs. Ryan and Rothman:

Attached please find FINRA's new fingerprint plan ("Plan"). The Plan supersedes and replaces FINRA's current fingerprint plan, which was declared effective by the Securities and Exchange Commission ("Commission") on November 2, 2021 (the "2021 Fingerprint Plan").<sup>1</sup>

Executive Summary

The Plan is necessary because FINRA must retire its fingerprint processing platform, which it has been using for over 20 years to directly channel fingerprints of transfer agent and clearing agency personnel to the Federal Bureau of Investigation ("FBI") due to the termination of support of essential software used by the platform. As discussed in more detail below, under the Plan transfer agents and clearing agencies will have the option to use an FBI-approved private channeler ("FBI-Approved Channel Partner") with which FINRA has contracted to enable them to satisfy their fingerprinting requirements under

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<sup>1</sup> Securities Exchange Act Release No. 93511 (November 2, 2021), 86 FR 61801 (November 8, 2021) (Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc.) ("Declaration of Effectiveness of FINRA Fingerprint Plan").

Section 17(f)(2) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> FINRA is requesting that the Plan be declared effective no later than September 29, 2023. FINRA will cease channeling fingerprints of transfer agent and clearing agency personnel upon the Commission declaring the Plan effective or on September 29, 2023, whichever is earlier. The Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA’s officers, directors, employees and contractors, and will extend such processes to personnel of transfer agents and clearing agencies with respect to the use of the FBI-Approved Channel Partner.<sup>3</sup>

### Background

The fingerprinting requirements for securities industry personnel are set forth in Section 17(f)(2) of the Exchange Act, which provides, in pertinent part, that every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, and national securities association shall require each of its partners, directors, officers, and employees to be fingerprinted and submit those fingerprints to the Attorney General (“Attorney General”) of the United States for identification and appropriate processing.<sup>4</sup> In addition, Section 17(f)(2) explicitly directs the Attorney General to provide self-regulatory organizations designated by the Commission (e.g., FINRA) with access to all criminal history record information.

Before the 2021 Fingerprint Plan was declared effective by the Commission, FINRA facilitated securities industry participants’ compliance with the fingerprinting requirement

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<sup>2</sup> The FBI-Approved Channel Partner is authorized to submit fingerprints to the FBI and receive the results on behalf of an organization, like FINRA, that uses the information for authorized non-criminal justice purposes (e.g., employment suitability, licensing determinations, etc.).

<sup>3</sup> FINRA’s 2021 transition to the FBI-Approved Channel Partner provides broker-dealers an efficient option to comply with the fingerprinting requirements in Section 17(f)(2) and enables FINRA to fulfill its critical regulatory responsibilities for those entities. The 2021 transition similarly enables FINRA to efficiently fingerprint its officers, directors, employees and contractors consistent with New York General Business Law Section 359-e and Exchange Act Section 17(f)(2) and thereby safeguard against potential threats to FINRA personnel, facilities and records. As a result of the 2021 transition, the number of fingerprints processed through FINRA’s fingerprint platform decreased by 97 percent. See infra note 7.

<sup>4</sup> Section 17(f)(2) also requires partners, directors, officers, and employees of any registered securities information processor and national securities exchange to be fingerprinted.

in Section 17(f)(2) by directly channeling to the FBI<sup>5</sup> fingerprints submitted by those participants consistent with a fingerprint plan filed with and declared effective by the Commission.<sup>6</sup> FINRA directly channeled these fingerprints using a proprietary platform that used vendor-provided software and specialized communications equipment. Although FINRA continues to process fingerprints submitted by registered transfer agents and registered clearing agencies, it soon will no longer have the ability to directly channel fingerprints to the FBI as its fingerprint processing platform must be retired.<sup>7</sup> Specifically, in addition to the vendor discontinuing the software used for the platform and ceasing to support the software, FINRA learned in late 2022 that other software (an unrelated server product) that is integral to the platform's operation will no longer be supported after October 10, 2023.

FINRA did not transition the processing of fingerprints of transfer agent and clearing agency personnel in 2021 to the FBI-Approved Channel Partner principally because FINRA was seeking to exit its role as a direct channeler of fingerprints for those entities.<sup>8</sup>

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<sup>5</sup> The Attorney General has designated the FBI to identify and process such fingerprints.

<sup>6</sup> Exchange Act Rule 17f-2(c) provides that securities industry participants required to fingerprint personnel under Exchange Act Section 17(f)(2) may satisfy that fingerprinting requirement by submitting fingerprints to a registered national securities exchange or to FINRA (a registered national securities association) pursuant to such a plan.

<sup>7</sup> In part because of the age of its platform and the accompanying risk of the platform's failure, FINRA in 2021 transitioned to an FBI-Approved Channel Partner to facilitate the processing of fingerprints of broker-dealer personnel (both FINRA members and other broker-dealers), as well as FINRA personnel. This transition resulted in a 97 percent decrease in the number of fingerprints processed through FINRA's fingerprint platform. See supra note 3.

<sup>8</sup> As FINRA noted in its October 28, 2021 letter transmitting the 2021 Fingerprint Plan, FINRA historically has channeled fingerprints for personnel of transfer agents and clearing agencies notwithstanding that it has no regulatory responsibility for those entities (i.e., FINRA does not register or regulate those entities or their personnel). In that role, FINRA channels fingerprints of such personnel through its platform to the FBI for processing and transmits the results to the submitting transfer agent or clearing agency. See Letter from Richard E. Pullano, Vice President and Associate General Counsel, FINRA, to Devin Ryan, Assistant Director, Office of Chief Counsel, Division of Trading and Markets, Commission, dated October 28, 2021, <https://www.finra.org/sites/default/files/2021-11/fingerprint-plan.pdf>.

To that end, FINRA was engaged in discussions with FBI and Commission staff regarding identifying an alternative approach whereby those entities would be able to fulfill their Exchange Act requirement to fingerprint their personnel without FINRA's involvement.<sup>9</sup> Identifying an alternative approach was critical given the age and fragility of FINRA's fingerprint processing platform. FINRA determined to continue to channel fingerprints for those entities through FINRA's platform while seeking to identify an alternative approach.

It was while working to identify such an alternative approach that FINRA learned that the retirement of its fingerprint processing platform is required no later than October 10, 2023. As a result, FINRA will no longer be able to channel fingerprints of transfer agent and clearing agency personnel after that date. Given that development and the exigent need to continue to provide an option for transfer agents and clearing agencies that are currently using FINRA to meet the Exchange Act fingerprinting requirement, FINRA shifted its efforts (and corresponding discussions with Commission and FBI staff) to finding an immediate solution for those entities. The efforts culminated in FINRA arranging for its FBI-Approved Channel Partner to serve, on an interim basis, as a fingerprinting option for transfer agents and clearing agencies that elect to use it while FINRA continues to work with Commission and FBI staff to find a permanent solution that does not involve FINRA.<sup>10</sup>

#### Request for Declaration of Effectiveness

Accordingly, under the Plan, the FBI-Approved Channel Partner will be the central point of intake for fingerprints from those transfer agents and clearing agencies that elect to use it for their personnel who are required to be fingerprinted under Section 17(f)(2). The FBI-Approved Channel Partner will offer state-of-the-art collection services for those fingerprints at locations nationwide.<sup>11</sup> After either collecting fingerprints directly or

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<sup>9</sup> See Declaration of Effectiveness of FINRA Fingerprint Plan, supra note 1, at n.7.

<sup>10</sup> No additional action is needed by the FBI to implement this interim measure because its 2021 approval of FINRA's outsourcing of its fingerprint channeling responsibilities extends to all entities identified in Exchange Act Section 17(f)(2), including transfer agents and clearing agencies. See letter from Chasity S. Anderson, FBI Compact Officer, National Crime Prevention and Privacy Compact Council Office, FBI, to Derek W. Linden, Executive Vice President, FINRA, dated September 28, 2021, <https://www.finra.org/sites/default/files/2021-11/fingerprint-process-sterling.pdf>.

<sup>11</sup> Fingerprints will be collected electronically at those locations in the domestic United States. Fingerprints collected outside of the domestic United States must be captured and transmitted for processing consistent with protocols established by the FBI.

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receiving them from transfer agents or clearing agencies (or their authorized agents), the FBI-Approved Channel Partner will transmit the fingerprints to the FBI for processing, track their status, and securely make both the statuses and results available to FINRA, which, in turn, will securely make the fingerprint statuses and results available to the transfer agent or clearing agency.<sup>12</sup>

By making the services of FINRA's FBI-Approved Channel Partner available to transfer agents and clearing agencies as an interim measure while FINRA works with all appropriate parties including Commission and FBI staff to find a permanent solution that does not involve FINRA, the Plan will provide those entities the ability to continue satisfy their Exchange Act requirement to fingerprint their personnel following the retirement of FINRA's fingerprint processing platform. As noted by the Commission, these statutorily mandated fingerprint-based background checks help protect investors and serve the public interest.<sup>13</sup> As previously noted, the Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA's officers, directors, employees and contractors, and will extend such processes to personnel of transfer agents and clearing agencies with respect to the use of the FBI-Approved Channel Partner. Accordingly, FINRA respectfully requests that the Commission declare the Plan effective consistent with its authority in Rule 17f-2(c) under the Exchange Act.

Yours truly,

/s/ Richard E. Pullano

Richard E. Pullano  
Vice President and Associate General Counsel

Enclosure

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<sup>12</sup> FINRA intends to make the statuses and results available electronically through a secure method that meets FBI requirements; however, FINRA may deliver the fingerprint results in hard copy in the unlikely event secure electronic delivery is unavailable.

<sup>13</sup> See Declaration of Effectiveness of FINRA Fingerprint Plan, supra note 1, at 61803.

## Exhibit A

### Financial Industry Regulatory Authority; Fingerprint Plan

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this fingerprint plan (“Plan”) pursuant to Rule 17f-2(c) under the Securities Exchange Act of 1934 (“Exchange Act”). This Plan supersedes and replaces FINRA’s current fingerprint plan, which was declared effective by the Securities and Exchange Commission (“Commission”) on November 2, 2021 (the “2021 Fingerprint Plan”).<sup>1</sup>

The purpose of this Plan is to facilitate compliance with Section 17(f)(2) of the Exchange Act by providing a program for FINRA members,<sup>2</sup> other broker-dealers, transfer agents, clearing agencies, and FINRA to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or its designee (hereinafter “Attorney General”).

#### 1. Members and other Broker-Dealers

FINRA partners with an FBI-approved private channeler (“FBI-Approved Channel Partner”)<sup>3</sup> to process fingerprints and identifying information from personnel of members and

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<sup>1</sup> Securities Exchange Act Release No. 93511 (November 2, 2021), 86 FR 61801 (November 8, 2021) (Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc.). Pursuant to the 2021 Fingerprint Plan, FINRA channels fingerprints for transfer agents and clearing agencies. FINRA will continue to channel fingerprints for these personnel consistent with the 2021 Fingerprint Plan until the Plan is declared effective or September 29, 2023, whichever is earlier. The Plan will continue without changes the processes established under the 2021 Fingerprint Plan for broker-dealer personnel, as well as FINRA’s officers, directors, employees and contractors.

<sup>2</sup> For purposes of the Plan, the term “members” includes Capital Acquisition Brokers, Funding Portals and applicants for FINRA membership.

<sup>3</sup> The FBI-Approved Channel Partner is one of a limited number of entities approved by the FBI to submit fingerprints to the FBI and receive the results on behalf of an organization using that information for authorized non-criminal justice purposes (e.g., employment suitability, licensing determinations, etc.). The FBI reviews and approves all outsourced channeling relationships consistent with its outsourcing standards and protocols. As outlined in the September 28, 2021 letter from the FBI’s National Crime Prevention and Privacy Compact Council Office (“CCO Letter”), the FBI has reviewed and conditionally granted permission to FINRA to use a specified FBI-Approved Channel Partner contingent upon FINRA filing a fingerprint plan with the Commission and the Commission declaring that fingerprint plan effective. See CCO Letter, available at <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>. The terms of the CCO Letter are incorporated by reference in the Plan.

other broker-dealers required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. The FBI-Approved Channel Partner fingerprints such personnel or accepts fingerprints of such personnel (either in electronic or hard copy format) and submits such fingerprints to the Attorney General for processing consistent with protocols and requirements established by the Attorney General.<sup>4</sup>

FINRA receives results from the FBI-Approved Channel Partner after the fingerprints have been processed by the Attorney General and makes those results available to authorized recipients (i.e., to a member or other broker-dealer that submitted the fingerprints and to regulators, as appropriate, for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General. With respect to members and other broker-dealers, FINRA also reviews any Criminal History Record Information returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and to take action, as appropriate, with respect to such persons.

FINRA maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by the FBI-Approved Channel Partner pursuant to this Plan in accordance with FINRA's records policy.<sup>5</sup> Any maintenance of fingerprint records by FINRA shall be for FINRA's own administrative purposes; FINRA is not undertaking to maintain fingerprint records on behalf of FINRA members pursuant to Exchange Act Rule 17f-2(d)(2). FINRA records in FINRA systems the status of fingerprints of personnel of members and other broker-dealers submitted to the Attorney General.<sup>6</sup> Through these systems, FINRA makes available to a member or other broker-dealer that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

## 2. Transfer Agents and Clearing Agencies

FINRA is partnering with an FBI-Approved Channel Partner to provide transfer agents and clearing agencies the option to process fingerprints and identifying information for their personnel who are required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. The FBI-Approved Channel Partner fingerprints such personnel or accepts fingerprints of such personnel (either in electronic or hard copy format)<sup>7</sup> from a transfer agent or clearing agency that elects to use it and submits such fingerprints to the Attorney General for processing consistent with protocols and requirements established by the Attorney General. After receiving the processed results, FINRA makes them available to the submitting

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<sup>4</sup> On its website, FINRA informs its members and other broker-dealers of the availability of fingerprint services and any fees charged by FINRA in connection with those services and the processing of fingerprints pursuant to this Plan. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>.

<sup>5</sup> FINRA's records policy is to maintain all records for at least five years.

<sup>6</sup> These systems include the Central Registration Depository (CRD<sup>®</sup>) and the Funding Portal Registration Depository (FPRD<sup>®</sup>).

<sup>7</sup> See supra note 4.

transfer agent or clearing agency (i.e., an authorized recipient of the results) consistent with protocols and requirements established by the Attorney General.

### 3. FINRA Personnel

FINRA partners with the FBI-Approved Channel Partner to obtain fingerprints and identifying information from FINRA personnel who are required to be fingerprinted under Exchange Act Section 17(f)(2) and consistent with its Policy to Conduct Fingerprint-Based Background Checks (“Fingerprint Policy”).<sup>8</sup> The FBI-Approved Channel Partner transmits fingerprints to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General and securely makes the results available to FINRA after the fingerprints have been processed. FINRA evaluates the fingerprint results and takes any appropriate action in accordance with the terms of the Fingerprint Policy.

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<sup>8</sup> Securities Exchange Act Release No. 50157 (August 5, 2004), 69 FR 49924 (August 12, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-095).