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June 28, 2021

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Seeks Comment on Supporting Diversity and Inclusion in the Broker-Dealer Industry, Regulatory Notice 21-17

Dear Ms. Piorko Mitchell:

Teachers Insurance and Annuity Association of America (“TIAA”) welcomes the opportunity to submit this letter to the Financial Industry Regulatory Authority (“FINRA”) in response to its request for comment on supporting diversity and inclusion in the broker-dealer industry (the “Request for Comment”).¹ TIAA applauds FINRA’s efforts to improve aspects of its “rules, operations, and administrative processes that may create unintended barriers to greater diversity and inclusion in the broker-dealer industry or that might have unintended disparate impacts on those within the industry.”² As a leader in the responsible investing space, TIAA is dedicated to building a more inclusive financial system – one that is equitable, diverse, and accessible. Our commitment to financial inclusion, which motivated our company’s founding over one hundred years ago, extends throughout the entire TIAA organization, including to our FINRA-regulated broker-dealer affiliates.³ We strongly believe that financial inclusion is a key component of a robust, resilient financial system. For that reason, we welcome FINRA’s consideration of the ways in which its rules and processes might be modified to enhance diversity in the broker-dealer industry.

¹ *FINRA Seeks Comment on Supporting Diversity and Inclusion in the Broker-Dealer Industry, Regulatory Notice 21-17* (Apr. 29, 2021), available at: <https://www.finra.org/rules-guidance/notices/21-17>.

² *Id.*

³ TIAA’s registered broker-dealer subsidiaries include TIAA-CREF Individual & Institutional Services, LLC and Nuveen Securities, LLC.

I. **About TIAA.**

Founded in 1918, TIAA is the leading retirement provider for those in academic, research, medical and cultural fields. For over a century, TIAA's mission has been to aid and strengthen the institutions and participants we serve and to provide investment solutions that meet their needs. Our investment model and long-term approach aim to benefit the approximately five million individual customers we serve across more than 15,000 institutions. TIAA has been committed to building a more inclusive financial system since we were founded for the purpose of helping teachers and other non-profit workers achieve retirement security. TIAA also has five decades of experience in responsible investing, and offered one of the first dedicated environmental, social, and governance funds, the CREF Social Choice Account.

As part of our commitment to improving economic and racial equity in the financial-services industry, TIAA announced in May 2021 that it was joining with 17 other leading U.S. financial institutions to launch the Corporate Call to Action: Coalition for Equity & Opportunity (CCA), a corporate social justice initiative. The CCA has announced four new commitments aimed at advancing financial inclusion: diversifying suppliers and business partners; investing in underserved communities; building a diverse talent pipeline; and improving workforce equity and transparency. In making these commitments, TIAA hopes to use our industry influence to advance a more equitable, diverse, and inclusive economic landscape for all. As part of that effort, we offer the below suggestions as to how FINRA can better support the broker-dealer industry's efforts to become more equitable and inclusive.

II. **FINRA should consider changes to better support and serve ESL customers of broker-dealers.**

Question 5: Are there additional changes that FINRA could make to its rules, consistent with the scope and limitations of its statutory mandate, to affirmatively foster diversity, inclusion and equal opportunity in the broker-dealer industry?

An important part of promoting financial inclusion is ensuring that the financial system is fully accessible to individuals who speak English as a second language ("ESL"), many of whom are part of underserved communities. We urge FINRA to consider changes to its rules and processes that would make it easier for ESL individuals to receive communications and services from financial institutions in their native language. Specifically, we recommend that FINRA consider offering its qualifying exams in languages other than English in order to increase the pool of financial professionals who are able to communicate with ESL customers in their native language. Currently, candidates with limited English proficiency ("LEP") (*i.e.*, individuals who do not speak English as their primary language and have limited ability to read, speak, write or understand English) must apply to FINRA to receive additional time to complete their qualifying exams. But even if a LEP candidate is granted the ability to take extra time to complete her test, the fact that FINRA's qualifying exams are available only in English poses a significant and, for some, insurmountable obstacle. Offering qualifying exams in English only makes it more difficult for ESL candidates from underrepresented groups to become financial professionals. This is doubly concerning from a financial inclusion perspective, because it makes the pool of talent in the broker-dealer industry less diverse than it could be, and ultimately produces fewer broker-dealer representatives who can provide services to ESL customers. By offering qualifying exams in languages other than English, FINRA can significantly enhance the diversity of the

broker-dealer industry and provide ESL customers with greater access to financial professionals who can work with them in their native language.

III. FINRA should make changes to its rules and forms and publish guidance for broker-dealers to ensure that financial professionals and customers are able to accurately express their gender identity.

Question 5: Are there additional changes that FINRA could make to its rules, consistent with the scope and limitations of its statutory mandate, to affirmatively foster diversity, inclusion and equal opportunity in the broker-dealer industry?

With a growing number of Americans identifying as transgender or gender non-binary, it is important that the financial-services industry examine its existing rules and policies to determine what changes need to be made to protect the needs and rights of those individuals.

Accommodating transgender and gender non-binary persons, whether they be financial professionals or retail customers, is a crucial part of building an equitable and inclusive financial system. At TIAA, we believe that when our employees and customers are able to be their full selves and receive appropriate support from the institutions they rely on – whether their employer or their financial-services provider – they are able to engage more fully in their work and financial decisions from a place of empowerment, confidence, and authenticity. That is why TIAA maintains and is further developing internal policies and procedures designed to respect and protect expressions of gender identity by our employees and customers.

In the same spirit, we strongly urge FINRA to review its rules and processes to identify any changes that would make it easier for FINRA-registered financial professionals to express and share preferences around their gender identity. For example, we recommend that FINRA consider whether there are any roadblocks in its registration, licensing, or data publication processes that make it difficult for financial professionals to change their gender identity as recorded in FINRA's records. FINRA should be mindful of how its testing sites accommodate people who identify as non-binary or transgender, including by ensuring that non-gendered bathrooms are available and FINRA staff are trained to accommodate these individuals' needs and preferences. We would also ask FINRA to ensure that gender non-binary financial professionals are given the option to self-report their gender identity outside of the male/female binary framework on Form U4, and as part of any other relevant FINRA form or registration process. FINRA should also consider giving registered representatives the option of identifying their preferred pronouns on Form U4 (but should not require them to do so). These changes would not only make it easier for transgender and gender non-binary financial professionals to ensure that FINRA's records accurately reflect their gender identity, it would signal FINRA's values of respect and inclusivity to the broader financial community.

In addition to making changes to its own rules and systems, we would also encourage FINRA to issue guidance for broker-dealers seeking to become more inclusive and accommodating on the issue of gender identity. We firmly believe that many financial institutions are eager to build a more diverse and welcoming workplace, but may not be aware of best practices on every issue. This is particularly true with respect to the topic of gender identity, which has rapidly evolved in recent years to become an area of primary focus for employers seeking to foster a more inclusive office culture. As FINRA contemplates potential changes it could make to its own internal rules and processes to allow transgender and non-binary individuals to express their

gender identity more accurately, it would be helpful for FINRA to leverage that hard work and careful thought into guidance that could be useful to the broker-dealer industry at large.

IV. FINRA should consider limiting its criminal history disclosure requirements to exclude minor crimes and charges that occurred more than ten years ago.

Question 3: Does the current collection and publication of registered representative background data, including that which relates to education, employment status, tenure, and complaints and grievances, create an unintended barrier to greater diversity in the broker-dealer industry?

A growing number of states and individual employers have taken action in recent years to limit or eliminate the once-common practice of asking job candidates about their criminal history as part of the hiring process. Over the past decade, there has been a proliferation of “ban the box” laws passed by state and local governments requiring employers to remove questions pertaining to previous arrests or convictions from their employment applications. Increasingly, lawmakers are taking the position that giving employers access to a job applicant’s criminal history results in adverse outcomes for many otherwise-qualified candidates, without providing enough upside for employers to justify the negative impacts. Studies have shown that approximately one-third of the adult working age population in the U.S. has a criminal record.⁴ Thus, any hiring process that officially or functionally disqualifies job candidates based on their criminal history will prevent a countless number of individuals from accessing opportunities they may very well be qualified for. The burden of these hiring practices falls most harshly on members of underrepresented communities that suffer from disproportionate rates of arrest and incarceration.

Given the growing trend toward eliminating questions about a job applicant’s criminal history (or at least delaying those questions until later in the hiring process), we would urge FINRA to review how it requests, publishes, and scrutinizes criminal history disclosures provided by candidates who are applying to become registered representatives. On Form U4, FINRA asks applicants to disclose whether they have ever pled guilty to or been charged or convicted of a felony, or a misdemeanor involving investments or an investment-related business or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of those offenses. FINRA uses the information provided on Form U4 to populate broker profiles on its BrokerCheck system, among other things. To be clear, we fully acknowledge the importance of discerning whether a future financial professional has a history involving fraud, violent crimes, or financial crimes that call into question the ability of the individual to provide financial services with prudence, trust, and integrity. However, some criminal matters have no clear bearing on an individual’s ability to serve as an associated person of a registered broker-dealer. This is especially the case for relatively minor misdemeanors, or those crimes committed decades earlier followed by demonstrated rehabilitation. Yet we note that Form U4 asks applicants to disclose past crimes – including felony and certain misdemeanor charges, which may never have resulted in convictions – without specifying a relevant timeframe. This is in contrast to the financial disclosure section of Form U4, which asks only for an applicant’s relevant financial information over the past ten years.

⁴ “Breaking the Cycle of Mass Incarceration,” Brennan Center for Justice (Jan. 3, 2020), *available at*: <https://www.brennancenter.org/our-work/analysis-opinion/breaking-cycle-mass-incarceration>.

In our view, the current FINRA review standards discourage firms from considering candidates whose criminal histories may not be a clear barrier to employment. Broker-dealers may hesitate in hiring a candidate who has even a single relatively dated applicable misdemeanor charge on his or her record, knowing that that information will be reviewed and published by FINRA. As a result, we expect that there are a significant number of qualified job applicants who are effectively being barred from working in the broker-dealer industry due to past criminal incidents that may be unrelated to their desired position, and are of no concern to their potential employer. Given that incarceration rates in the United States disproportionately impact underrepresented minorities, we are highly concerned that FINRA's criminal disclosure requirements and publication of criminal history data on BrokerCheck are serving to decrease the diversity of the talent pool that broker-dealers have to choose from when making hiring decisions.

For these reasons, we would urge FINRA to evaluate its requirements around criminal history disclosure and publication for registered representatives whose records include criminal charges or convictions for certain felonies and misdemeanors and/or for those that occurred long ago followed by demonstrated rehabilitation. We believe that FINRA should amend or limit its disclosure requirements (e.g., by imposing a ten-year window within which crimes must be reported) in such a way that FINRA and the industry as a whole can still obtain and report important information about serious, relevant, and timely criminal incidents. At the very least, it would be helpful to broker-dealers if FINRA were to provide guidance around those criminal events that it views as potentially disqualifying for a registered representative, versus those that should have little to no bearing on the registration process. Given the developing policy arguments around the questionable merit of asking job applicants to disclose their criminal history, we believe the time is ripe for FINRA to join the discussion and consider addressing the ways in which its criminal history disclosure requirements may be limiting diversity in the broker-dealer industry.

V. FINRA should determine whether registered representatives from underrepresented groups are subject to a disproportionate number of customer complaints – and if so, should consider changing its processes for publishing complaints.

Question 3: Does the current collection and publication of registered representative background data, including that which relates to education, employment status, tenure, and complaints and grievances, create an unintended barrier to greater diversity in the broker-dealer industry?

Under FINRA Rule 4530, registered representatives of broker-dealers are understandably required to notify FINRA of any customer complaint that alleges misconduct related to the sale of financial products, even if the allegations are without merit. FINRA publishes customer complaints made against registered representatives via the BrokerCheck system, regardless of whether those complaints are substantiated or not. While FINRA does allow registered representatives to provide comments in response to a particular customer complaint or note that the complaint was investigated and denied by the representative's firm, this opportunity may not significantly mitigate the damage that an unsubstantiated customer complaint can do to a financial professional's career.

In our view, the fact that FINRA publishes customer complaints made against registered representatives on BrokerCheck, regardless of whether there is any evidence to support them,

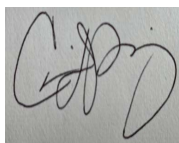
raises concerns about potential bias in the customer complaint process. In recent years, there has been a growing awareness in the financial industry of the ways implicit bias impacts a multitude of human interactions, including those that take place between financial professionals and their customers. It could be revealing for FINRA to review customer complaint data in an effort to determine whether registered representatives from underrepresented groups are subject to a disproportionate number of customer complaints. This is a crucial issue to study because of the serious harm a financial professional can suffer when he or she is associated with unsubstantiated customer complaints on BrokerCheck.

If there is evidence to suggest that bias, whether racial, gender-based, or otherwise, is causing a statistically significant, or clearly disproportionate, number of unsubstantiated customer complaints to be lodged against registered representatives from underrepresented groups, FINRA might consider a number of remedial actions such as: publishing only those complaints of a sufficiently serious nature, as opposed to minor grievances (or distinguishing between material complaints and minor grievances in the BrokerCheck display); requiring some baseline level of investigation and proof before publishing a complaint; giving registered representatives better options for indicating that a complaint has been investigated and refuted; or changing the way unsubstantiated and/or refuted customer complaint information is displayed on BrokerCheck. Regardless of FINRA's response to this issue, we believe it is important that, as a first step, FINRA examine the fundamental question of whether implicit or explicit bias may be playing a role in the customer complaint process. Addressing this question will help FINRA ensure that it is not inadvertently creating roadblocks for certain registered representatives, and in turn stifling greater diversity in the broker-dealer industry, by publishing unsubstantiated complaints that are motivated by prejudice or unconscious bias.

VI. **Conclusion.**

TIAA appreciates FINRA's efforts to support diversity in the broker-dealer industry and its consideration of our thoughts on this important issue. We are driven by our focus on the societal lift that comes from broader financial inclusion and access, consistent with our organization's founding purpose. We hope the perspectives we have offered in this letter will be helpful as FINRA works to promote equity in the financial services industry. We welcome further engagement on any aspect of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Corie Pauling', is written over a light gray rectangular background.

Corie Pauling