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Mr. Devin Ryan
Assistant Director, Office of Chief Counsel
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100 F Street, NE
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RE: FINRA Fingerprint Plan

Dear Mr. Ryan:

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 Commission on May 2, 2006 (the "2006 Fingerprint Plan"). The Plan is necessary because FINRA is transitioning to a new fingerprinting process due to the age of FINRA's current fingerprint processing platform¹ and the availability of more modern alternatives offered by private vendors approved by the Federal Bureau of Investigation ("FBI") to channel fingerprints. To facilitate continued compliance with the fingerprinting requirement in Section 17(f)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), FINRA is transitioning to a new fingerprinting process for broker-dealer personnel (both FINRA members and other broker-dealers) and for FINRA personnel using the services of such an FBI-approved channeler ("FBI-Approved Channel Partner"). FINRA anticipates transitioning to the new process on December 6, 2021. As discussed in more detail below, FINRA will continue at this time its current role of channeling fingerprints for transfer agents and clearing agencies.²

¹ FINRA's current platform uses a customized application that includes software licensed from a vendor, and specialized equipment (to scan, digitize and transmit fingerprints in accordance with FBI requirements). The vendor has discontinued the software used in the customized application and ceased providing support for it in July 2021. As a result, the customized application, while still fully operational, is currently supported only by FINRA technology resources.

² Under the 2006 Fingerprint Plan, FINRA channeled fingerprints submitted by broker-dealers, transfer agents, and clearing agencies for personnel who were required to be fingerprinted under the Exchange Act.

The fingerprinting requirements of 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 of the United States (“Attorney General”) for identification and appropriate processing.³ 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.

As part of the transition, FINRA will partner with an FBI-Approved Channel Partner, which is an entity authorized 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.).⁴ The FBI-Approved Channel Partner will offer state-of-the-art fingerprint services to broker-dealers that include collecting fingerprints at locations nationwide and leasing fingerprint equipment to broker-dealers that wish to print personnel in-house. Under the Plan, the FBI-Approved Channel Partner will be the central point of intake for fingerprints from broker-dealer personnel who are required to be fingerprinted under Section 17(f)(2). After either collecting fingerprints directly or receiving them from broker-dealers (or their authorized agents), the FBI-Approved Channel Partner will transmit the fingerprints to the FBI⁵ for processing, track their status, and securely make both the statuses and results available to FINRA.⁶

³ Section 17(f)(2) also requires partners, directors, officers, and employees of any registered securities information processor and national securities exchange to be fingerprinted.

⁴ 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.

⁵ The Attorney General has designated the FBI to identify and process such fingerprints.

⁶ FINRA has obligations under the outsourcing arrangement. Among other things, FINRA is responsible for monitoring the FBI-Approved Channeler’s compliance with the terms and conditions specified in the Security and Management Control Outsourcing Standard for Channeling (Outsourcing Standard). The link to the

FINRA, as it does today, will make available to broker-dealers the status of the fingerprint submissions of their personnel and the results of the processed fingerprints (including relevant criminal history, if any) through the Central Registration Depository (“CRD[®]” or “CRD system”).⁷ In addition, FINRA will continue to review the fingerprint results to fulfill its regulatory responsibilities,⁸ store those results in the CRD or FPRD systems and make them available to other regulators that are authorized to view the results.

In addition to broker-dealer personnel, FINRA historically has processed fingerprints submitted by registered transfer agents and registered clearing agencies for personnel who are required to be printed under the Exchange Act. FINRA has a more limited role in the processing of fingerprints of these personnel in that it acts solely as a channeler for those fingerprints (i.e., after receiving fingerprints of transfer agent or clearing agency personnel, FINRA submits them to the FBI, receives the results of the fingerprint check, and transmits those results to the transfer agent or clearing agency, as appropriate).⁹ FINRA will continue to process fingerprints for personnel of transfer agents and clearing

most current version of the Outsourcing Standard dated November 5, 2020, is available at <https://www.fbi.gov/file-repository/compact-council-security-and-management-control-outsourcing-standard-for-channelers.pdf/view>.

⁷ FINRA will make available to funding portal members the status of the fingerprint submissions of their personnel and the results of the processed fingerprints (including relevant criminal history, if any) through the Funding Portal Registration Depository (“FPRD[®]”).

⁸ FINRA reviews fingerprint results to ensure that applicants for registration have reported appropriately information responsive to the questions on Form U4 (the Uniform Application for Securities Industry Registration or Transfer) relating to criminal history and to identify whether any broker-dealer personnel required to be fingerprinted is subject to a statutory disqualification under the Exchange Act based upon a criminal conviction.

⁹ Because transfer agents and clearing agencies do not use the CRD system for registration purposes, FINRA is unable to disseminate the fingerprint statuses and results through that system (as it does for broker-dealer personnel). FINRA did not include a separate discussion of transfer agents and clearing agencies in the 2006 Fingerprint Plan because these organizations were covered under the “securities industry participant” category. FINRA is including a separate discussion in the Plan given that FINRA at this time will continue to channel fingerprints submitted by transfer agents and clearing agencies for personnel required to be fingerprinted under the Exchange Act and will make the results available to the appropriate transfer agent or clearing agency directly.

agencies consistent with its current practice and fingerprint processing platform while it engages in discussions with appropriate SEC and FBI staff regarding an alternative approach that would enable these organizations to efficiently fulfill their obligations to fingerprint their personnel as required under the Exchange Act, but that would not involve FINRA acting in a channeler role.¹⁰ While the FBI-Approved Channel Partner for the broker-dealer population will service the vast majority¹¹ of fingerprints processed, FINRA will continue to work with the appropriate parties to identify an alternative approach to replace the current platform.¹²

FINRA also fingerprints its officers, directors, employees and contractors consistent with New York state law¹³ and Exchange Act Section 17(f)(2) as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).¹⁴ As reflected in the Plan, FINRA will use the FBI-Approved Channel Partner to process fingerprints for these personnel.¹⁵

The partnership with the FBI-Approved Channel Partner will enable FINRA to continue to reliably facilitate fingerprinting of the personnel of broker-dealers as required under Section 17(f)(2) of the Exchange Act. It also will enable FINRA to continue to fulfill its critical regulatory and investor protection responsibilities, including the identification of broker-dealer personnel required to be fingerprinted who may be subject to a statutory disqualification based on a criminal conviction. Similarly, the partnership will enable FINRA to continue to fulfill its Exchange Act requirement to perform fingerprint-based

¹⁰ FINRA staff expects to broaden those discussions to include members of the transfer agent and clearing agency communities at the appropriate time.

¹¹ For the last two years, transfer agent and clearing agency personnel have accounted for less than two percent of the fingerprints processed by FINRA for all securities industry personnel.

¹² FINRA will notify the SEC staff should an issue arise that affects FINRA’s ability to process fingerprints on the current platform and will work with the staff and relevant stakeholders to identify an alternative process to maintain continuity.

¹³ N.Y. Gen. Bus. Law § 359-e (McKinney).

¹⁴ Pub. L. No. 111-203, § 929S, 124 Stat. 1376, 1867 (2010).

¹⁵ FINRA began fingerprinting a subset of employees and contractors in response to Section 359-e of the NY General Business Law. *See* 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). FINRA extended fingerprinting to members of its Board of Governors following the Dodd-Frank amendments to Exchange Act Section 17(f)(2).

Mr. Devin Ryan
October 28, 2021
Page 5

background checks on covered FINRA personnel. Performing these checks will enable FINRA to identify persons with criminal convictions who may pose a threat to the safety of FINRA personnel or the security of FINRA facilities and records. Safeguarding against such potential threats will help ensure FINRA's ability to protect investors and maintain market integrity.

The Plan reflects FINRA's transition to an FBI-Approved Channel Partner for processing fingerprints of broker-dealer personnel and covered FINRA personnel.¹⁶ The Plan also affirms that FINRA will continue at this time to channel fingerprints submitted by transfer agents and clearing agencies for personnel required to be fingerprinted under the Exchange Act and makes other minor revisions to the 2006 Fingerprint Plan. FINRA respectfully requests that the SEC 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

¹⁶ After the Plan is declared effective, FINRA will continue to channel fingerprints of broker-dealer and FINRA personnel until the new fingerprinting process with the FBI-Approved Channel Partner is fully implemented.

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 May 2, 2006 (the “2006 Fingerprint Plan”).¹

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,² 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 is partnering with an FBI-approved private channeler (“FBI-Approved Channel Partner”)³ to process fingerprints and identifying information from personnel of members and 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

¹ Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006) (Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.). Pursuant to the 2006 Fingerprint Plan, FINRA channels fingerprints for, among others, FINRA members, other broker-dealers and FINRA personnel. FINRA will continue to channel fingerprints for these personnel consistent with the 2006 Fingerprint Plan until the new fingerprinting process set forth in the Plan is fully implemented.

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

³ 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.

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.⁴

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.⁵ 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.⁶ 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 accepts fingerprints and identifying information from transfer agent personnel and clearing agency personnel who are required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. FINRA accepts fingerprints of such personnel in hard copy format and transmits fingerprints to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General.⁷ After receiving the processed results, FINRA transmits them to the submitting transfer agent or clearing agency (i.e., an authorized recipient of the results). FINRA informs transfer agents and clearing agencies of its fingerprint processing services and the fees associated with those services.

⁴ 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>.

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

⁶ These systems include the Central Registration Depository (CRD[®]) and the Funding Portal Registration Depository (FPRD[®]).

⁷ FINRA is channeling transfer agent and clearing agency fingerprints and not using the FBI-Approved Channel Partner for this purpose.

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”).⁸ 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.

⁸ 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).