

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98488)

September 22, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc.

On September 22, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a new fingerprint plan (“Plan”)<sup>1</sup> pursuant to Rule 17f-2(c)<sup>2</sup> under the Securities Exchange Act of 1934 (“Exchange Act” or “Act”).<sup>3</sup> The Plan supersedes and replaces FINRA’s current fingerprint plan, which was declared effective for the Commission by the Division of Trading and Markets, pursuant to delegated authority, on November 2, 2021 (“2021 Fingerprint Plan”).<sup>4</sup>

As discussed in the FINRA Letter, historically FINRA has processed fingerprints submitted from registered transfer agent and registered clearing agency (hereinafter referred to as “transfer agents” and “clearing agencies”) personnel who are required to be fingerprinted using FINRA’s fingerprint processing platform.<sup>5</sup> FINRA states that the new

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<sup>1</sup> Attached hereto as Exhibit A. See also Letter from Richard Pullano, Vice President and Associate General Counsel, FINRA, to Devin Ryan, Assistant Director, Office of Chief Counsel and Moshe Rothman, Assistant Director, Office of Clearance and Settlement, Division of Trading and Markets, dated September 22, 2023 (“FINRA Letter”).

<sup>2</sup> 17 CFR 240.17f-2(c).

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> See Exchange Act Release No. 93511 (November 2, 2021), 86 FR 61801 (November 8, 2021), <https://www.sec.gov/files/rules/other/2021/34-93511.pdf> (Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry Regulatory Authority, Inc. (“2021 Declaration”)). See also 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.sec.gov/files/rules/other/2021/finra-incoming-fingerprint-plan-cover-letter.pdf> (“FINRA October 2021 Letter”).

<sup>5</sup> See FINRA Letter at 1. See id. at 3, n.8. See also 2021 Declaration at 5-6, 12 (describing fingerprinting processing for transfer agent and clearing agency personnel). As FINRA notes, as a result of the 2021 Fingerprint Plan transition, the percentage of fingerprints processed through FINRA’s fingerprint platform decreased by 97 percent. See FINRA Letter at 1, n.3.

Plan is necessary because FINRA must retire its fingerprint processing platform, due to the termination of support of essential software used by the platform.<sup>6</sup> Because its fingerprint processing platform will no longer be supported, FINRA states that there is an exigent need to provide an option for transfer agents and clearing agencies that are currently using FINRA to meet the Exchange Act fingerprinting requirement.<sup>7</sup> Accordingly, FINRA is adopting a new Plan to reflect that it has arranged for its FBI-approved channeler (“FBI-Approved Channel Partner”)<sup>8</sup> to serve, on an interim basis, as a fingerprinting option for transfer agents and clearing agencies that elect to use it.<sup>9</sup> FINRA states that it will continue to work with SEC and FBI staff to find a more permanent solution that does not involve FINRA acting in a channeler role for transfer agents and clearing agencies.<sup>10</sup> Importantly, FINRA explains that the new Plan will continue, without any changes, the processes established under the 2021 Fingerprint Plan for broker-dealer personnel,<sup>11</sup> as well as

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<sup>6</sup> See FINRA Letter at 1. FINRA states that, for over 20 years, it directly channeled fingerprints of transfer agent and clearing agency personnel to the Federal Bureau of Investigation (“FBI”) using a proprietary platform that used vendor-provided software and specialized communications equipment. Although FINRA continues to process fingerprints submitted by transfer agents and 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. 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. See *id.* at 1-2.

<sup>7</sup> See *id.* at 1-4. FINRA states that it 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. See Exhibit A, at 1, n.1.

<sup>8</sup> See Exhibit A at 1, n.3. See also 2021 Declaration at 2, n.6 (discussing the FBI’s conditional approval of FINRA using a specified FBI-Approved Channel Partner).

<sup>9</sup> See FINRA Letter at 3-4.

<sup>10</sup> See *id.* at 3. FINRA states that no additional action is needed by the FBI to implement this interim measure because the FBI’s 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 FINRA Letter at 3, n. 10 (citing 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.sec.gov/files/rules/other/2021/fbi-compact-officer-approval-letter.pdf>.

<sup>11</sup> See *id.* at 1, 4. For purposes of the Plan, broker-dealer personnel includes personnel of FINRA members and other broker-dealers required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. The term “members,” as used in the Plan, includes Capital

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 its FBI-Approved Channel Partner.<sup>12</sup>

For the reasons discussed below, the Commission finds that, pursuant to Rule 17f-2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

1. Applicable Standard

Section 17(f)(2) of the Act provides, in pertinent part, that “every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency...and national securities association shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing.”<sup>13</sup> However, in accordance with Exchange Act Rule 17f-2(c), the fingerprinting requirement of Section 17(f)(2) may be satisfied by submitting appropriate and complete fingerprint cards to, among others, a registered national securities association (such as FINRA) which, pursuant to a plan filed with and declared effective by the Commission, forwards such fingerprint cards to the Attorney General or its designee for

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Acquisition Brokers, Funding Portals and applicants for FINRA membership. See Exhibit A at 1-2, n.2.

<sup>12</sup> See id. at 1, 4. 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 percentage of fingerprints processed through FINRA’s fingerprint platform decreased by 97 percent. See id. at 1, n.3. See also 2021 Declaration at 4-6, 11-13.

<sup>13</sup> 15 U.S.C. 78q(f)(2). Hereinafter, “Attorney General of the United States” referred to as “Attorney General.”

identification and appropriate processing.<sup>14</sup> Under Rule 17f-2(c), such a fingerprinting plan—like FINRA’s 2021 Fingerprint Plan and this Plan—shall not become effective unless it is declared effective by the Commission, which requires the Commission to find that the plan is “not inconsistent with the public interest or the protection of investors.”<sup>15</sup>

FINRA states that the purpose of the Plan is to facilitate compliance with Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder by providing a program for, among others, transfer agents and clearing agencies, to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General.<sup>16</sup> FINRA also states it is providing, on an interim basis, transfer agents and clearing agencies an option to use an FBI-Approved Channel Partner with which FINRA has contracted to enable them to satisfy their fingerprinting requirements.<sup>17</sup> 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 its FBI-Approved Channel Partner.<sup>18</sup>

## 2. Transfer Agents and Clearing Agencies

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).<sup>19</sup> The FBI-

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<sup>14</sup> 17 CFR 240.17f-2(c).

<sup>15</sup> See id. The Commission may also impose any terms and conditions relating to the provisions of the plan and the period of its effectiveness as it may deem necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. See id.

<sup>16</sup> See Exhibit A at 1.

<sup>17</sup> See FINRA Letter at 3-4. See also id. at 3, n.10 and accompanying text.

<sup>18</sup> See id. at 1, 4. See also 2021 Declaration at 4-6, 11-13.

<sup>19</sup> See FINRA Letter at 3.

Approved Channel Partner will offer state-of-the-art collection services for those fingerprints at locations nationwide.<sup>20</sup> After either collecting fingerprints directly or 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>21</sup>

### 3. Commission's Declaration of Effectiveness of the Plan

In accordance with Rule 17f-2(c) of the Act, the Commission has reviewed the procedures detailed in the Plan and declares the Plan to be effective, finding that it is not inconsistent with the public interest and the protection of investors.

The Commission observes that most of FINRA's 2021 Fingerprint Plan, which the Commission found previously to be not inconsistent with the public interest and the protection of investors,<sup>22</sup> will remain largely unchanged.<sup>23</sup> As a result, the Commission has no reason to revisit its prior finding with respect to those unchanged provisions.

With respect to FINRA's decision to arrange for its FBI-Approved Channel Partner to serve, on an interim basis, as a fingerprinting option for transfer agents and clearing agencies, the Commission observes the following representations made by FINRA. FINRA

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<sup>20</sup> See id. at 3-4. FINRA also states that under the Plan, "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." See id. at 4 n.11.

<sup>21</sup> See id. at 4. FINRA has also states it "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." See id. at 4 n.12.

<sup>22</sup> See 2021 Declaration at 2-3, 6-7, 9.

<sup>23</sup> As discussed in Section 2, supra, 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.

states that the 2021 Fingerprint Plan’s 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.<sup>24</sup> The 2021 Fingerprint Plan similarly enables FINRA to efficiently fingerprint its officers, directors, employees and contractors consistent with New York state law and Exchange Act Section 17(f)(2) and thereby safeguard against potential threats to FINRA personnel, facilities and records.<sup>25</sup> FINRA further states that making the services of FINRA’s FBI-Approved Channel Partner available to transfer agents and clearing agencies as an interim measure 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, while FINRA works with all appropriate parties to find a permanent solution.<sup>26</sup>

The Commission agrees with FINRA’s observation that these statutorily-mandated fingerprint-based background checks—whether performed by FINRA itself for transfer agents and clearing agencies under the 2021 Fingerprint Plan or FINRA’s prior plan<sup>27</sup> or by an FBI-Approved Channel Partner under this Plan—will continue to help protect investors and serve the public interest.

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<sup>24</sup> See FINRA Letter at 1, n.3.

<sup>25</sup> See *id.*

<sup>26</sup> See FINRA Letter at 3-4.

<sup>27</sup> See Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006), <https://www.sec.gov/files/rules/other/2006/34-53751.pdf> (Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.).

Based on the foregoing, the Commission finds that, pursuant to Rule 17f-2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>28</sup> 17 CFR 200.30-3(a)(17)(iii).

## 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).