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June 24, 2021

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

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

Dear Ms. Mitchell:

Robinhood Financial, LLC and Robinhood Securities, LLC (collectively, “Robinhood”) submit this letter in response to the Financial Industry Regulatory Authority Inc.’s (“FINRA”) request for public comment on aspects of FINRA’s 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. Robinhood applauds FINRA for requesting comment on this important and timely topic, and for undertaking the additional initiatives discussed in Regulatory Notice 21-17 (the “Notice”).

Robinhood operates with the singular mission to democratize finance for all, and has revolutionized access to our nation’s capital markets, making them available to all investors, regardless of their background. In line with this mission, one of Robinhood’s core values is that participation is power. While this value generally applies to our customers and colleagues, we believe that the broker-dealer industry also is at its best when diversity is fostered, and when participants are given equal opportunities. We are proud that we have three times more African-American investors and double the industry average of Hispanic investors on our platform. In addition, we quadrupled the number of women investing with Robinhood in 2020, and the average age of our customers is 31. As such, the topic of diversity and inclusion in the broker-dealer industry is one that is of paramount importance to us and we appreciate the leadership role that FINRA is and has been taking in this area.

I. Executive Summary

This letter highlights Robinhood’s views on opportunities for FINRA to advance diversity and inclusion in the broker-dealer industry. Specifically, we discuss the following three topics:



- First, we recommend that FINRA work with the SEC, states and other stakeholders to revise Form U4 (Uniform Application for Securities Industry Registration or Transfer) Question 14A to avoid a disparate impact based on race and national origin.
- Second, we recommend that FINRA amend Rule 3110 (Supervision) to permanently permit remote inspections of non-branch locations in certain circumstances when appropriate.
- Finally, we support FINRA's recent proposal to amend Rule 1240 (Continuing Education Requirements) to provide a path for eligible individuals to maintain their qualification following termination of a registration through continuing education.¹

We note that these recommendations are just the beginning of what we hope is a larger and continuing discussion involving the entire broker-dealer industry and ways in which we may further support diversity and inclusion.

II. Robinhood Recommends that FINRA Update and Revise its Practices Regarding Form U4 Question 14A

In response to FINRA's request for comment on specific questions in the Notice,² Robinhood recommends that FINRA work with the the SEC, states and other stakeholders to: (1) revise Form U4 Question 14A(1)(a) to provide a narrowly tailored, relevant timeframe of ten years or less; (2) narrow the scope of Question 14A(1)(b) to require disclosure solely for charges currently pending, or to eliminate the question entirely; and (3) reduce the follow-up questions related to aged items appearing on the Criminal Justice Information Service (CJIS) report (Fingerprint Reports) that do not indicate any formal charges or convictions ever occurred in a matter.

Question 14A(1) currently asks whether the individual has *ever* (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony, or (b) been charged with any felony. According to research related to arrest and conviction records in employment decisions under Title VII of the Civil Rights Act, for example, "African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population," and "African

¹ See SR-FINRA-2021-015 ("Rule 1240 Proposal").

² For example, FINRA asked: "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?"



Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites.”³ Data supporting the conclusion that racial disparities are widespread in the U.S. criminal justice system is abundant. On its own this data is troubling, and Robinhood believes that requiring individuals to disclose this information without a reasonable timeframe or in situations without a conviction is likely harmful, misaligned with relevant industry standards, and not necessary to protect the investing public.

Article III, Section 4 of FINRA’s By-Laws provides that a person is subject to “disqualification” with respect to membership, or association with a member, if such person is subject to any “statutory disqualification” as such term is defined in Section 3(a)(39) of the Exchange Act. One item on the list of disqualifying events under Section 3(a)(39) of the Exchange Act is certain misdemeanor and all felony criminal convictions for a period of ten years from the date of conviction.⁴ Under this regulation, an individual would not be statutorily disqualified for felony charges or convictions older than ten years, but – without explanation in the rules – disclosure is still required by the Form U4. Robinhood believes that, in instances unrelated to financial crimes,⁵ aged information about prior convictions would not be relevant to an individual’s current risk profile as it relates to the securities industry. Therefore, Robinhood is recommending that FINRA work with the SEC, states and other stakeholders to update Question 14(A)(1)(a) to include a narrowly tailored timeframe of ten years or less (excluding financial crimes), consistent with the related statutory disqualification regulation, in order to capture only recent and relevant information.

In addition, Robinhood recommends that FINRA work with the SEC, states and other stakeholders to narrow the scope of Question 14A(1)(b) to charges currently pending, or to eliminate the question entirely. Robinhood believes that the broad scope of the question is problematic because it captures charges that did not result in a conviction. Charges may be dismissed or not pursued for various reasons, including, for example, after a false arrest or where the facts simply do not support the charges. The

³ See U.S. Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act (April 25, 2021), *available at* <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#IIIB> (“EEOC Guidance”).

⁴ See 15 USC § 78c(a)(39)(F).

⁵ We recommend that FINRA define “financial crimes.” Financial crimes could include, for example, convictions related to fraud, market manipulation, insider trading, money laundering, embezzlement, bribery, and corruption.



lack of any conviction significantly reduces the related risk to the investing public, especially regarding aged criminal history, and to require an individual to revisit long-ago, irrelevant events which might be both embarrassing and potentially distressing could discourage their desire to join the industry.

Finally, in our experience, follow-up requests by FINRA regarding items appearing on the CJIS report have resulted in inquiries about aged arrests even where the individual was not formally charged with a crime, due to the way in which the arrest was documented (e.g., the word “charged” was used on the record without further context, or as a stand-in for the term “arrested” or simply the charges noted on arrest documents). In these instances, the individual is often asked by FINRA to provide proof that the arrest did not result in formal charges, which puts an unfair burden on the individual, who may have moved to another part of the country. This is especially true for aged matters, where the records may be sealed or the documents may be unavailable, and it may require considerable time and expense to navigate the complex police and court records systems that are not consistent throughout the country. Given the existing racial disparities in arrests, this burden could disproportionately affect minority applicants.⁶ Therefore, Robinhood believes that FINRA should champion the effort to revise or eliminate the questions related to prior criminal matters on the Form U4 and should cease requiring firms and applicants to follow up on aged information noted on CJIS reports where there is no indication that any charge or conviction occurred.

III. Robinhood Recommends that FINRA Permanently Permit Certain Remote Inspections

Robinhood also recommends that FINRA consider amending Rule 3110 (Supervision) to permanently permit remote inspections of non-branch locations in certain circumstances. We greatly appreciate the flexibility FINRA has provided for remote inspections for the last 15 months during the COVID-19 public health crisis, and understand that FINRA may be considering extending remote office inspections through 2022.⁷ We encourage FINRA to analyze during that time whether remote inspections have been successful, and assess the appropriateness of permanently allowing this practice.

⁶ According to FINRA guidance, arrests without charges are not required to be reported in response to Form U4 Question 14A. See FINRA, Form U4 and U5 Interpretive Questions and Answers, Form U4 Questions 14A and 14B, Q3.

⁷ See, e.g., <https://www.wealthmanagement.com/regulation-compliance/firms-inspections-offices-may-stay-remote-2022>.



The COVID-19 pandemic resulted in nation-wide work from home orders that helped prove that remote inspections do work. Accordingly, Robinhood believes that remote inspections may be suitable for non-branch locations, such as where an employee's personal residence would be subject to the on-site inspection requirements under Rule 3110. For a variety of reasons, employees (and possibly their family members) may not feel comfortable with an on-site inspection at their home, and Robinhood believes that an on-site inspection requirement could disproportionately disadvantage some individuals (for example, those who live in a multi-generational household or have caretaking responsibilities for younger, disabled, or elderly family members).

To support diversity and inclusion, many companies outside of the broker-dealer industry have transitioned to permit more full-time remote positions. This transition allows companies to both attract a more diverse potential employee pool, including employees who cannot work outside of their home, and better retain them. As companies begin returning to offices over the coming months, we have heard that, beyond full-time remote work, employees desire additional flexibility, including the ability to work from home 1-2 days a week to avoid often lengthy commutes and increased child care costs due to extended hours to cover the workday and the commute. However, due to the high cost and diversion of resources associated with on-site inspections, member firms are disincentivized from allowing flexible work arrangements. Robinhood believes that allowing certain remote inspections of non-branch locations would encourage firms to be more flexible in approving remote working arrangements, which in turn, would benefit associated persons (in addition to firms),⁸ advance diversity and inclusion, and allow the broker-dealer industry to remain competitive with other industries offering flexibility. The ability for firms to allow for flexible working arrangements would support groups such as working parents, and especially working mothers, who often bear disproportionate childcare responsibilities and already are underrepresented in the broker-dealer industry.⁹ In addition, we believe that employees who rely solely on public transportation and live further from offices, including younger and racial/ethnic minority employees, could even be discouraged from working in the broker-dealer industry to the extent that firms cannot offer flexible work arrangements.

⁸ See Letter from Lisa D. Crossley, Executive Director, The National Society of Compliance Professionals, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (January 12, 2018).

⁹ For example, in 2020, women in general made up only 37.4% of the securities, commodities, funds, trusts, and other financial investments industry in 2020. See U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (2020).



Given current technological capabilities, Robinhood believes that firms would be equipped to successfully conduct remote inspections in compliance with Rule 3110. FINRA previously sought comment regarding the ability of firms to conduct remote inspections, and we encourage FINRA to revisit the comment letters received in response as many were supportive and are still applicable today.¹⁰ As other firms rightly noted, for example, “there is often very little, if anything, to physically review when conducting on-site inspections of these offices.”¹¹ Additionally, for the past fifteen months, firms have conducted remote inspections pursuant to Rule 3110.17, and therefore would likely be ready to comply with updates to Rule 3110 to permanently allow for certain remote inspections. We believe that firms should be able to make decisions on a case-by-case basis about the appropriateness of remote inspections, taking risk factors into account (e.g., whether the employee interacts with clients from the location, whether the employee has access to checks or securities, or whether they may be on heightened supervision).

Robinhood recognizes that supervision under Rule 3110 is a critical component of broker-dealer regulation,¹² but does not believe that a blanket policy prohibiting remote inspections is reasonable. We believe that, for the reasons stated above, amending Rule 3110 to permanently provide firms flexibility to determine whether to conduct remote inspections of non-branch locations such as employees’ homes, would advance diversity and inclusion in the broker-dealer industry. Further, amending Rule 3110 to permit this practice would help FINRA modernize its rulebook to align with current industry practices, including flexible work locations. If FINRA determines to amend the Rule to permit remote inspections, we would encourage FINRA to refine the information it previously published regarding best practices in a remote work environment to provide additional guidance based on what staff has seen at firms throughout this period.¹³

¹⁰ See Regulatory Notice 17-38.

¹¹ See Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services LLC, et al., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (January 12, 2018).

¹² See, e.g., SEC, Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision, *available at* <https://www.sec.gov/interps/legal/mrslb17.htm>.

¹³ See Regulatory Notice 20-16.



IV. Robinhood Supports FINRA's Recent Proposed Amendments to Rule 1240

Finally, Robinhood supports FINRA's recent proposal to amend Rule 1240. We are specifically supportive of the aspect of the proposal that provides a path, through continuing education, for individuals to maintain their qualification following the termination of a registration.

We agree with the assertions in the Rule 1240 Proposal that this aspect of the proposal aligns with other professional continuing education programs that allow professionals to maintain their qualification to work in their respective fields during periods of absence from their careers by satisfying continuing education requirements for their credential. More importantly, we agree that the proposal would “provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time.”¹⁴ This type of flexibility helps support diversity and inclusion, as individuals who take time away from their role in the securities industry, whether out of choice or necessity, would not be disadvantaged for doing so. For example, the proposal's two-year look-back provision would allow women who were forced to terminate their registration during the COVID-19 pandemic to focus on family caregiving responsibilities to maintain their qualification rather than worry about trying to return earlier than needed for fear of having to requalify. The U.S. unemployment rate (for the entire U.S. workforce) jumped from 3.2% in January 2020 to 15.5% in April 2020 for women, and from 3.1% to 13.1% during the same time period for men,¹⁵ indicating that women were laid off or otherwise left the workforce in higher numbers, and would therefore be at a greater disadvantage if not for this type of flexibility.

V. Conclusion

Robinhood is grateful for the opportunity to provide its views, and for FINRA soliciting public comment on these important issues from the broker-dealer industry and other interested stakeholders. We are optimistic that FINRA has an opportunity to make a positive impact and continue its leadership regarding diversity and inclusion in the broker-dealer industry through considered revisions to its rules, regulations and processes. We believe that implementing the recommendations in this letter would help

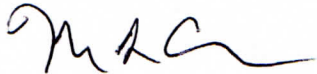
¹⁴ See Rule 1240 Proposal, *supra* n. 1.

¹⁵ See U.S. Bureau of Labor Statistics, Civilian Unemployment Rate, available at <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>.

advance the industry in a positive direction, and we look forward to working with FINRA and the industry to continue advancing positive change.

We welcome the opportunity to discuss any of the points raised in our letter in greater detail. Please contact either of the undersigned for any questions or to further discuss our recommendations.

Sincerely,



Norman L. Ashkenas
Chief Compliance Officer
Robinhood Financial, LLC



Kelly Zigaitis
Chief Compliance Officer
Robinhood Securities, LLC

cc: Jeanette Wingler, Associate General Counsel, Office of General Counsel
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