



February 5, 2021

Hon. Liz Krueger, Chair  
Standing Committee on Finance  
New York State Senate  
Room 416 CAP  
Albany, NY 12247

Hon. Helene Weinstein, Chair  
Assembly Standing Committee on Ways and Means  
New York State Assembly  
Room LOB 923  
Albany, NY 12248

**RE: The New York Data Accountability and Transparency Act: Part II of the Public Protection and General Government Article VII Bill of the Executive Budget**

Dear Chair Krueger and Chair Weinstein:

The Financial Industry Regulatory Authority ("FINRA") appreciates the opportunity to comment on the New York Data Accountability and Transparency Act ("DATA Act"), proposed as Part II of the Public Protection and General Government budget bill. This measure would provide data privacy protections for New York residents and place certain privacy-related obligations on a wide variety of entities. FINRA generally supports increased privacy protections but seeks an exemption from the DATA Act as a not-for-profit that regulates broker-dealers and their associated persons pursuant to the Securities Exchange Act of 1934.<sup>1</sup> FINRA is overseen by the Securities and Exchange Commission ("SEC") and works closely with the SEC in executing its regulatory responsibilities.

FINRA is a mission-driven organization that regulates brokerage firms doing business with the public in the United States – including the more than 275,000 financial advisors registered to do business in New York, and the more than 10,100 brokerage offices in the state. Overseen by the SEC, FINRA writes rules, examines for and enforces compliance with FINRA Rules and federal securities laws, registers broker-dealer personnel and informs the investing public. We also administer licensing qualification examinations<sup>2</sup> and provide and administer continuing education to securities industry professionals.<sup>3</sup>

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<sup>1</sup> See Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o-3).

<sup>2</sup> FINRA develops and administers qualifying examinations to securities industry professionals, which serve as a prerequisite to FINRA registration. FINRA also administers state law examinations on behalf of the North American Securities Administrators Association ("NASAA").

<sup>3</sup> FINRA develops and administers the Regulatory Element programs of the FINRA Continuing Education requirements for all persons associated with FINRA-registered broker-dealers.

FINRA has 18 offices across the United States, including two in New York.<sup>4</sup> FINRA regularly collaborates with the Investor Protection Bureau (“IPB”) of the New York Attorney General’s Office to register<sup>5</sup> broker-dealer agents<sup>6</sup> and oversees brokerage firms and their agents who fall under the jurisdiction of both FINRA and the IPB. In addition to investigating violations of federal securities laws, FINRA refers relevant matters to the IPB.

We are concerned that FINRA may unintentionally be a covered entity under the proposed DATA Act, which could place several legal obligations on FINRA that would interfere with our ability to fulfill our investor protection mandate from the SEC.

If enacted in its current form, several requirements of the DATA Act would be impossible or extremely difficult for FINRA to implement as a national regulator of the brokerage industry. These requirements would also create new threats to both retail and institutional investors in New York. We’ve outlined a couple examples below for your consideration:

- **Notices and Disclosures**

Several sections<sup>7</sup> of the bill would require specific notices, disclosures or information to be given to certain individuals regarding the use of their data at specific times. As a regulator of the brokerage industry, the personal information we collect is submitted by the entities we regulate or individual market participants. Because FINRA typically has no direct relationship with the individuals whose information is collected, FINRA would be unable to provide the required notices “at or before the point of collection.”<sup>8</sup>

For example, as part of our examination or investigation of a firm for compliance with FINRA rules or federal securities law, firms may be required<sup>9</sup> to produce voluminous documents and records that contain large amounts of personal information, which FINRA may share with other regulators. FINRA’s requests for information often target practice areas, not people, which would make FINRA unable to provide notices to the individuals whose personal information is collected as part of these requests. Requiring FINRA to provide these notices would interfere with our regulatory and investor protection efforts.

- **The Right to Opt-Out of Information Sharing**

Several sections<sup>10</sup> of the proposed DATA Act place limitations on the sharing of information in certain situations, including at the request of the individual. As noted above, FINRA shares the personal information of consumers with other regulators for enforcement and regulatory purposes – including the IPB. Prohibiting FINRA from

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<sup>4</sup> In New York and Jericho, New York.

<sup>5</sup> FINRA facilitates the processing of state broker-dealer and investment adviser registrations through our CRD and IARD platforms, including the collection and disbursement of fees, review of qualifications and a review of applications for completeness and accuracy.

<sup>6</sup> Soon to include Investment Adviser Representatives in New York. More information is available at: <https://www.finra.org/registration-exams-ce/classic-crd> (See “Announcements.”) Accessed February 3, 2021.

<sup>7</sup> Including Sections 3(c) and 3(f).

<sup>8</sup> Section 3(c).

<sup>9</sup> Pursuant to firms’ books and records requirements under the Securities Exchange Act of 1934.

<sup>10</sup> Including Sections 4(g)(i), 4(g)(iv), 5(a)(i) – (iii) and 5(b)(a).

sharing such information would have cascading impacts across the organization and directly prevent FINRA from fulfilling its regulatory mission and significantly hinder our ability to protect investors and ensure integrity of the securities markets.

The above outlines several high-level examples of situations where the application of the DATA Act to FINRA could have serious negative consequences for New York investors and the securities markets. It is for these reasons that FINRA believes the bill was not intended to apply to FINRA. In fact, Federal regulators are excluded by operation of law,<sup>11</sup> and Section 2(a) of the DATA Act specifically excludes, "state and local government entities, including agencies, boards, commissions, and authorities." We believe we may be unintentionally covered by this proposal because of our unique structure – we are a not-for-profit, non-governmental entity that regulates the brokerage industry pursuant to the Exchange Act<sup>12</sup> and is overseen by the SEC.

For the above reasons, we respectfully urge you to specifically exclude FINRA from this bill by adding the following language to Section 2(a):

"[...] or a National Securities Association as defined in Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o-3), as amended, or regulations adopted thereunder."

We are more than happy to discuss any or all these issues in greater detail. Thank you in advance for your time and consideration, and if you have any questions or need additional information, please contact Kyle Innes of FINRA at [kyle.innes@FINRA.org](mailto:kyle.innes@FINRA.org) or (646) 315-7367.

Sincerely,

Gregory J. Dean, Jr.  
Senior Vice President  
Office of Government Affairs  
FINRA

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<sup>11</sup> FINRA may also be excluded by operation of law, including through federal preemption.

<sup>12</sup> See Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o-3).