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July 28, 2020

*Submitted electronically to:* rule-comments@sec.gov

Ms. Vanessa Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE:** *SEC Release 34-89188: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision)*

Dear Ms. Countryman:

Wells Fargo & Company, together with its affiliates and subsidiaries (collectively, “Wells Fargo”), appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposed adoption of temporary Supplementary Material .16 under FINRA Rule 3110 that would extend the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021 (the “rule amendment”).<sup>1</sup>

Wells Fargo is a diversified, community-based financial services company with approximately \$1.9 trillion in assets and approximately 263,000 team members, which provides banking, investment and mortgage products and services, as well as consumer and commercial finance. Our broker-dealer<sup>2</sup> and asset management affiliates comprise one of the largest retail

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<sup>1</sup> FINRA, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision), File No. SR-2020-019, 85 Fed. Reg. 40713 (July 7, 2020).

<sup>2</sup> Wells Fargo Advisors (WFA) is a dually-registered broker-dealer and investment adviser that administers approximately \$1.6 trillion in client assets. It employs over 13,000 full-service financial advisors in branch offices in all 50 states and licensed financial specialists in retail bank branches across the United States. WFA is a non-bank affiliate of Wells Fargo & Company. “Wells Fargo Advisors” is the trade name for Wells Fargo Clearing Services, LLC (“WFCS”), a dually-registered broker-dealer and investment adviser, member FINRA/SIPC, and a separate non-bank affiliate of Wells Fargo & Co. “First Clearing” is the trade name for WFCS’s clearing business,

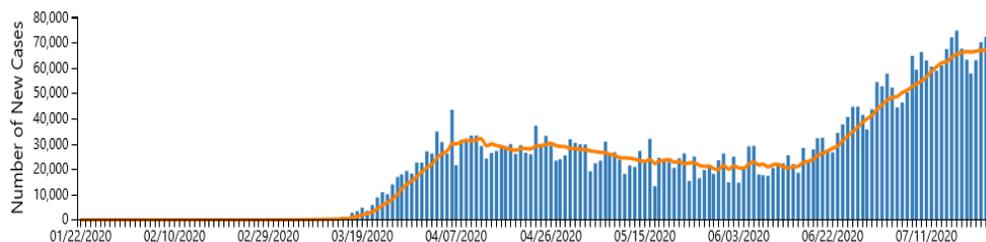
wealth management, brokerage and retirement providers in the United States, helping millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals.

## I. DISCUSSION

We strongly support FINRA’s effort to address the compelling health and welfare concerns stemming from the COVID-19 pandemic by, among other things, proposing to extend the time for member firms to complete their 2020 inspection obligations. More broadly, we commend FINRA, the Securities and Exchange Commission (“SEC”) and the Municipal Securities Rulemaking Board (“MSRB”) for addressing a number of important regulatory issues that support evolving governmental, workplace and social interaction norms during this pandemic.<sup>3</sup>

However, FINRA’s proposed action to extend and align its 2020 member firm inspection timeline with the MSRB’s recently-amended 2020 inspection timeframe is only a needed first step as this action does not address the underlying issue of the feasibility of traveling and conducting on-site inspections during a worldwide health crisis. Indeed, events since FINRA filed its proposed rule amendment with the SEC on June 20<sup>th</sup> not only strengthen the case for the proposed extension of the inspection deadline but also for swift regulatory approval to conduct inspections remotely in-lieu of on-site inspections during the pandemic.

Specifically, as noted below, we are witnessing a resurgence of COVID-19 cases in the United States that have risen to a level that is well above the rate prevailing when the MSRB and FINRA filed their respective rule amendments seeking to extend their inspection deadlines. In fact, the rate of COVID-19 cases reported on a daily basis in the United States has more than doubled since FINRA filed its rule amendment with the SEC.<sup>4</sup>



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providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network, a broker-dealer also providing advisory and brokerage services. For the ease of this discussion, this letter will use WFA to refer to all of these brokerage operations.

<sup>3</sup> See generally <https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants> (listing Commission approach to pandemic relief and listing various relief provided to the industry, including permitting the use of technology to hold meetings remotely).

<sup>4</sup> See generally <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (Centers for Disease Control and Prevention, the 7-day rolling average of daily COVID-19 cases on June 19, 2020 was 25,325; on July 25, 2020, the 7-day rolling average of daily COVID-19 cases had risen to 65,533).

The practical impact of this resurgence is that, to protect the health and welfare of our clients and employees, we are continuing to serve our clients and conduct operations mainly through work-from-home policies that were first implemented in mid-March 2020. Consequently, our brokerage branch offices are currently not open to the public except on an appointment basis, branch staff are generally working remotely, business travel is not permitted, and there is no certainty regarding when those conditions will change. These preventative measures were not undertaken lightly and are consistent with guidance from public health officials<sup>5</sup> to prevent the spread of COVID-19 and protect the lives and health of our employees and clients. In fact, given the current scope, severity, and fluidity of the COVID-19 pandemic, it is questionable at this point whether regular business travel will be permitted for the remainder of 2020 for Wells Fargo employees. We will continue to prioritize health and safety in our decision-making.

Furthermore, as reported COVID-19 case counts rise and hospitalizations increase, governmental actions to partially reopen the economy are starting to be rolled back. We are now seeing states and municipalities rapidly implement new safety measures, such as the reinstatement of state-level travel quarantines and closing of certain retail establishments, to address this evolving situation.<sup>6</sup> The above corporate and governmental safety measures instituted to protect against the spread of COVID-19 also prevents firms from conducting on-site inspections while also leaving unclear at what point we might consider phasing in on-site firm operations. At this point, WFA has completed 452 on-site inspections in 2020, with another 1,597 on-site inspections needed to be completed in this cycle pursuant to WFA's 2020 examination plan.<sup>7</sup> Simply extending the inspection completion date by three-months does not address the underlying issues that prevent on-site inspections during the pandemic, the fact that there is little activity to currently examine on-site in any event, and the real concern of infection (by both examiner and examinee).

Consequently, in our view, the rule amendment can only be viewed as the initial step in examining what inspection activities are appropriate during the pandemic, taking into account the health and welfare of our employees, the activities currently conducted within branch offices and the investor-protection mechanisms available to firms. To this end, we were heartened to see FINRA's commitment to "continue to monitor the situation and engage with member firms, other financial regulators, and governmental authorities to determine whether additional regulatory relief or guidance related to this rule may be appropriate."<sup>8</sup>

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<sup>5</sup> See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited July 20, 2020).

<sup>6</sup> See <https://www.npr.org/sections/coronavirus-live-updates/2020/07/21/893648360/n-y-n-j-connecticut-now-say-travelers-from-31-hotspot-states-must-quarantine>, "N.Y., N.J., Connecticut Now Say Travelers From 31 Hot Spot States Must Quarantine".

<sup>7</sup> WFA has completed 9 of a planned 842 on-site inspections of offices of supervisory jurisdiction. Of the branch inspections originally scheduled for 2020, we have completed 452 of 2,049 onsite visits. Post the March travel ban, we have completed 387 inspections following our interim remote inspection process.

<sup>8</sup> See note 1 *supra*.

## II. RECOMMENDATION TO PERMIT REMOTE INSPECTIONS IN LIEU OF ON-SITE INSPECTIONS DURING THE PANDEMIC

We recommend the SEC and FINRA grant temporary relief from the on-site inspection requirement of FINRA Rule 3110 to address both legitimate health concerns and the safety measures that effectively prevent on-site inspections at this time.<sup>9</sup> Current electronic books and records platforms and electronic supervisory systems permit firms to maintain investor protections envisioned under FINRA Rule 3110 during the pandemic through remote inspections of offices of supervisory jurisdiction or branch office locations, particularly in light of the limited on-site activities occurring at these locations.<sup>10</sup> Such a program would also be consistent with current SEC practices as evidenced by the fact that the SEC's Office of Compliance Inspections and Examinations has adopted remote inspection practices<sup>11</sup> and statements that the Division of Enforcement has been "conduct[ing] virtually all the core elements of [its] enforcement program remotely."<sup>12</sup> Finally, just this month, SEC Chairman Clayton stated that SEC staff employees would be permitted to continue work-from-home arrangements until at least October 2020.<sup>13</sup>

We believe industry remote inspection programs could effectively incorporate the inspection elements required by FINRA Rule 3110(c)(2)(A). For example, a proposed remote inspection program could include the following list of items, which are standard processes contained in the WFA inspection program:

- Pre-visit questionnaires for branch personnel and supervisors, into which firms have incorporated questions relevant to working remotely during COVID-19;
- Review of changes to policies and procedures implemented specifically due to COVID-19 challenges;
- Interviews via conference call with personnel and supervisory staff;
- Review of branch product mix vs. firm averages;
- Review of business/product mix of individual personnel;
- Testing of ongoing supervision of personnel by branch supervisors;
- Supervision of producing branch managers;
- Supervision of personnel subject to a heightened supervision plan;
- Supervision of personnel subject to prior disciplinary actions;

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<sup>9</sup> This requested relief might need to be extended to cover the 2021 examination cycle depending on the continued evolution of the pandemic.

<sup>10</sup> We noted that FINRA Rule 3110(c) requires broker-dealers to review the activities of each office and "inspect" each office on a specified cycle depending on the office classification. However, there appears to be no specific requirement in the rule that requires these office inspections to be performed on-site or in-person.

<sup>11</sup> See generally <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>.

<sup>12</sup> See

[https://financialadvisoriq.com/c/2818313/344873/keeping\\_pace\\_with\\_enforcements\\_despite\\_working\\_remotely?referrer\\_module=emailMorningNews&module\\_order=14&login=1&code=YkhWamFXRnVieTV0YjNOamFHVjBkR0ZBZDJWc2JITm1ZWepuYjJGa2RtbHpiM0p6TG1OdmJTd2dNakF4TURFeU1Dd2dORFF4TURJM01EVTU](https://financialadvisoriq.com/c/2818313/344873/keeping_pace_with_enforcements_despite_working_remotely?referrer_module=emailMorningNews&module_order=14&login=1&code=YkhWamFXRnVieTV0YjNOamFHVjBkR0ZBZDJWc2JITm1ZWepuYjJGa2RtbHpiM0p6TG1OdmJTd2dNakF4TURFeU1Dd2dORFF4TURJM01EVTU) (quoting SEC Enforcement Co-Director Stephanie Avakian as saying, "We've managed to conduct virtually all the core elements of the enforcement program remotely").

<sup>13</sup> See generally <https://www.bloomberg.com/news/articles/2020-07-13/wall-street-regulator-will-watch-markets-from-home-until-october>.

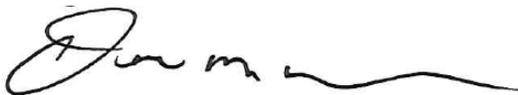
- Customer complaints and complaint trends reviewed by branch and individual personnel;
- Employee brokerage account activity;
- Review of outside business activities;
- Review of customer suitability;
- Targeted reviews of personnel electronic communications, including contact management;
- Targeted reviews of social media usage by personnel;
- Targeted internet searches;
- Supervision of actively traded accounts;
- Review of non-cash compensation;
- Product-specific concerns: annuities, mutual funds, ETFs, UITs and complex products; and
- Review of asset movements for anti-money laundering concerns.

As key technology and systems have improved, the vast majority of branch inspection activities are now completed prior to the on-site visit phase of the branch inspection.<sup>14</sup> Consequently, we respectfully recommend the SEC and FINRA expeditiously grant temporary relief from the on-site inspection requirement of FINRA Rule 3110. Furthermore, any continuing iterations of the remote branch inspection program should serve in lieu of an on-site inspection in 2021, as it seems likely that the COVID-19 pandemic will continue into next year.

## II. CONCLUSION

Wells Fargo appreciates the opportunity to respond to FINRA's proposed rule amendment. We stand ready to discuss with you this letter and the recommendations contained herein. If you would like to discuss this issue further or need additional information, please contact Robert J. McCarthy, Director of Regulatory Policy at Wells Fargo Advisors, at robert.j.mccarthy@wellsfargoadvisors.com, or Carl Tugberk, Head of Wealth and Investment Management Public Policy for Wells Fargo & Company, at carl.tugberk@wellsfargo.com.

Sincerely,



David M. Williams  
Chief Compliance Officer  
Wells Fargo Advisors

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<sup>14</sup> Approximately 90% of our inspection process is completed remotely prior to conducting an on-site visit. In past years, we estimate that approximately 85% of findings related to the inspection process are identified prior to the on-site visit.