



July 28, 2020

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SR-FINRA-2020-019

Commonwealth Financial Network[®] (“Commonwealth”) welcomes and appreciates the opportunity to comment on SEC Release No. 34-89188; File No. SR-FINRA-2020-019. The Financial Industry Regulatory Authority, Inc. (“FINRA”) submitted a notice of filing and immediate effectiveness of a proposed change to FINRA Rule 3110 (Supervision) to temporarily extend the time to complete office inspections.

While the relief provides firms until March 31, 2021 to complete the branch office inspections required by Rule 3110(c), from both a public health perspective as well as a practical perspective, the relief falls short. Commonwealth urges FINRA and the SEC to extend the relief to allow firms to continue to fulfill their branch examination responsibilities remotely.

Commonwealth is an independent broker/dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts and San Diego, California. Commonwealth has more than 2,000 independent contractor registered representatives (“advisors”) conducting business in more than 1,400 registered branch offices across all 50 states.

Health and Safety of Staff, Advisors, Their Family Members and the General Public Must Be Paramount

COVID-19 is a global pandemic, the likes of which has not been seen in more than 100 years. As of July 27, 2020, over 16 million people worldwide have been infected and over 650,000 have died as a result of the virus. The United States has the largest numbers of both infections and deaths in the world. COVID-19 is not contained and continues to spread at an alarming rate across the country. There is no COVID-19 vaccine or inoculation. Because the virus is insidiously contagious, the only preventive measures offered by the global medical community have been quarantine, social distancing, face coverings, and frequent hand washing. It is widely understood that individuals can be infected for weeks, and therefore spread COVID-19, yet display very limited symptoms - or no symptoms at all.

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As an organization that cares deeply about our entire community, and in particular our employees, advisors, their staff, and their immediate and extended families, we cannot in good conscience put any of them in harm's way. The thought of being required to expose our staff to air travel, hotel stays, and dining out for the sole purpose of conducting in-person meetings during a life-threatening pandemic is deeply concerning. In an article published by US News and World Reports dated July 6th, 2020, the reporter interviewed a number of infection disease experts to classify and prioritize the risks that certain activities present in contracting COVID-19. These experts assessed air travel with a risk factor of 8 out of 10.

Our employees, advisors and staff have a genuine fear of contracting COVID-19 that is supported by science and facts. Expecting firms to disregard the health and safety of the members of our community and the advice of medical personnel is unreasonable. Many local towns and municipalities won't allow children to attend school, and many states have implemented 14-day quarantine requirements. Firms should not be expected to defy the advice of the medical community and the requirements imposed by state and local government officials.

With the average age of financial advisors across this country being in the mid 50's, and a large segment of those age 70 or more, we *all* have a moral obligation to protect the most vulnerable in our community. Due to their age and other medical conditions, many of our advisors fall within the "high risk" category. It is not reasonable to expect them to welcome our employees into their branch offices after travelling state to state across the country. FINRA itself reports that "Due to the COVID-19 outbreak, most FINRA staff are working remotely" and "FINRA is postponing all in-person arbitration and mediation proceedings". The SEC's Office of Compliance Inspections and Examinations has also adopted a remote working process. .

The COVID-19 pandemic poses a profound and ongoing health threat to our home offices, our advisors, and staff, and shows no signs of abatement. While extending the deadline to conduct branch exams to March 31, 2021 is helpful, this rule change does not adequately address the continued health and safety of those associated with member firms, nor does it account for the continued gravity of the COVID-19 pandemic.

State Restrictions

The relief provided by FINRA does not consider the many state restrictions that have been imposed and are continuing to evolve due to COVID-19. As both FINRA and the SEC are no doubt aware, numerous states have imposed travel restrictions and self or mandatory quarantine requirements that make compliance even by the March 31, 2021 date impractical and unsafe.

All of Commonwealth's branch examination staff reside in either Massachusetts or California. Massachusetts residents are required to self-quarantine for 14 days after returning from traveling. California recently announced new limitations on its reopening and statewide closure requirements, and many California counties have their own specific reopening and ongoing business health and safety requirements.

Proposal is Functionally Untenable

While the proposal is designed as partial regulatory relief, it places additional burdens on firms. It is important to note that Commonwealth has not suspended its branch examination program. Rather, we adapted to the reality of the health risks attendant with this pandemic and suspended travel. Our branch examination schedule remains continuous, and examination staff have been conducting remote branch examinations during this time period. As written, the proposal requires Commonwealth to conduct on-site examinations of branch offices that we have already examined during the calendar year, albeit remotely. Commonwealth's remote examination program materially replicates the examinations we would have conducted were we physically onsite, while also ensuring the health and safety of our employees, advisors, and branch office staff.

The unknown duration of the pandemic only increases the burden on firms and exacerbates the impractical expectation that firms conduct on-site examination by March 31, 2021.

Commonwealth suspended travel by all of its staff in March and as of now we have no plans to resume travel by any specific date. While the proposal offers an additional quarter to travel to branch offices, each day that passes makes the feasibility of completing onsite examinations by March 31, 2021 increasingly impossible.

Moreover, the proposal will exert undue strain on finite firm resources in 2021. Commonwealth traditionally examines more branch offices than are technically required by Rule 3110(c). Due to the pandemic, we were forced to reduce the number of branches that would have otherwise been subject to our examination program and employed other means to conduct our reviews. We will need to conduct examinations of many of these branches to comply with Rule 3110(c) in 2021, and our examination schedule will reflect the increase. In addition, approximately 100 new advisors affiliate with Commonwealth every year which will increase the number of branches we must examine. In 2019, we examined over 1,400 advisors representing about 820 branch office locations, or about 205 per quarter. If we are required to conduct on-site examinations of all branch offices that would have been subject to a 2020 calendar-year examination, while also satisfying our 2021 calendar-year examination obligations, it is unlikely that we will have the time or resources to do so.

Proposal Contrary to Rule Requirements

In its description of the Purpose of the proposal, FINRA states:

“Rule 3110(c) requires on-site inspections of offices of supervisory jurisdiction (“OSJs”) and supervisory branch offices at least annually (on a calendar-year basis), nonsupervisory branch offices at least every three years, and non-branch locations on a regular periodic schedule, presumed to be every three years.”

This statement is not, in fact, accurate. Neither Rule 3110(c), nor its adopting release, require “on-site” examinations. FINRA Rule 3110(c)(1) on Internal Inspections reads as follows:

“Each member shall conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review shall be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with,

applicable securities laws and regulations, and with applicable FINRA rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each member shall also retain a written record of the date upon which each review and inspection is conducted.”

While FINRA and the SEC, through guidance and an interpretation in Regulatory Notice 11-54 (Nov. 2011), stated “[a] broker-dealer must conduct on-site inspections of each of its office locations . . .”, Rule 3110(c) makes no reference to any “on-site” examination requirement. This suggests that, at a minimum, FINRA and the SEC have reasonable flexibility to provide relief from existing staff interpretations and guidance relative to conducting “on-site” branch office inspections, while remaining compliant with Rule 3110(c).

Commonwealth has historically completed upwards of 80% of our inspection processes prior to visiting a branch location. While certain elements of our inspections have routinely been conducted onsite, such as the review of an advisor’s financial records, conducting the annual compliance meeting, reviewing physical signage, performing an information security check, and conducting a general walk-through of the office, the pandemic has provided unique and effective opportunities to experiment with numerous methods of accomplishing virtually all aspects of our inspection program remotely. All of the requirements for inspections described under Rule 3110(c)(2) and 3110(c)(3) can be reasonably accomplished remotely, without putting any staff or advisors at risk.

Conclusion

Commonwealth supports FINRA’s efforts to provide member firms with relief from the branch examination requirements of Rule 3110(c). Nevertheless, the proposal includes a presumption that the rule requires on-site examinations when it does not. In addition, the relief does not go far enough to recognize the unprecedented global emergency nor the significant risk of illness or death that could result from contracting the virus. It is imperative that FINRA and the SEC take reasonable steps to protect the health of all broker-dealer staff, their families and the general public by waiving any on-site branch examination requirement for the 2020 calendar year, and modifying Rule 3110(c) to provide for remote exams.

Commonwealth appreciates the opportunity to provide our comments.

Sincerely,

Matthew Sugden
Vice President, Compliance
Commonwealth Financial Network