



July 28, 2020

Submitted electronically through <http://www.regulations.gov>

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: **Notice and Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110: File Number SR-FINRA-2020-019**

Dear Ms. Countryman:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) on its approval of the extension of the effective date of the temporary amendments set forth in SR-FINRA-2020-019, which has the effect of extending the period in which broker-dealer firms can perform their year 2020 annual branch office on-site inspections to March 31, 2021 (the “Rule Extension”).

I. Introduction

Our letter provides our view on the Rule Extension as well as the broader, more paramount need for the Financial Industry Regulatory Authority’s (“FINRA”) rules to evolve to recognize the technology of today which allows firms to effectively supervise, oversee, and inspect their registered population.

The securities industry has evolved from its start in 1792 under a Buttonwood tree to the technology-driven businesses that exist today and will continue to evolve in the future. Included in this evolution is the technology that supports how broker-dealer employees work. Gone are the file cabinets containing hardcopy records, typewriters with correction tape, fax machines, and land-line phones. Today, the business world is increasingly digital, mobile, video-conferenced and paperless, and technology continues to rapidly improve. Broker-dealer customer records, communications and trading logs are maintained electronically and physical files are no longer maintained; computers and cell phones allow employees to work securely any place, at any time, while still subject to supervision and oversight through firms’ centralized electronic systems.

¹ Fidelity is one of the world’s largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, National Financial Services LLC, and Fidelity Distributors Company LLC.



Despite the technology advances and digital way of working, there is still a requirement for “on-site” inspections of branch offices (FINRA 3110(c)) and definitions of OSJ and branch offices that are based on the “location” where business or activities are conducted (FINRA 3110(f)). Rule 3110 must be modernized by removing the anachronistic assumption that business is conducted at physical locations and recognizing the significant role that technology plays in supervising broker-dealer employees who work from anywhere and do business through approved firm systems.

II. The Current Rule Extension is Likely Insufficient Due to the Continuing Pandemic; FINRA Should Permit Remote Inspections and Modernize its Internal Inspection Rules

We appreciate FINRA and the SEC’s efforts to provide flexibility to broker-dealers as they determine how best to comply with on-site inspection requirements while managing work environments significantly altered as a result of the COVID-19 virus. We further appreciate FINRA’s stated willingness to consider additional relief to address any backlog of on-site 2020 inspections as we believe the on-site portion of inspections will not be able to be completed by the revised March 31, 2021 deadline due to the current and very likely future travel restrictions² and health and safety concerns. As of March 2020, when COVID-19 related working arrangements were implemented, the on-site inspection requirements of 3110(c) were completed in fewer than 20 percent of Fidelity’s required 2020 locations. Even under non-pandemic conditions, completing on-site inspections of the remaining 80 percent of Fidelity’s required 2020 locations by March 2021 would be very aggressive.³ The unpredictability of the virus’ spread and need to ensure that broker-dealer employees can be kept safe will, in all likelihood, result in uncompleted 2020 on-site inspections.

There is, however, a way for FINRA to maintain the strong investor protections that effective supervision provides by permitting technology-assisted 3110(c) internal inspections. Robust, technology-based inspections can be completed by the Rule Extension date. Accordingly, we request that FINRA permit remote 3110(c) inspections⁴.

We also urge the SEC to recognize the technologies that can be used by broker-dealers to supervise and review their business, as well as the modern approach to flexible work arrangements, and expeditiously work to modernize the internal inspection rules of FINRA 3110(c). As part of this work, the FINRA 3110(f) definitions describing the locations where broker-dealer employees work would also need to be reviewed, as these definitions impact the type and frequency of internal inspection required by 3110(c). Modernizing these rules would allow broker-dealers to continue to ensure robust supervision, investor protection and market integrity while recognizing the

² As of July 10, “A third of states have strict measures in place for visitors, from mandatory testing to quarantine requirements.” <https://www.nytimes.com/2020/07/10/travel/state-travel-restrictions.html>

³ An additional consideration is when FINRA’s relief from updating Form BR and Form U4 will expire as this will trigger reviews of branch and non-branch locations created by the COVID-19 work from home situations.

⁴ Notably, FINRA started a process in 2017 which would have permitted remote inspections. However, three years later, proposed Regulatory Notice 17-38, which Fidelity submitted comments to, has yet to be finalized by the SEC. See Fidelity 2017 Comment Letter to FINRA, available at:

https://www.finra.org/sites/default/files/notice_comment_file_ref/17-38_fidelity_comment.pdf (“Fidelity 2017 Comment Letter”).

technological evolution of the securities industry and the transformation of where and how employees work⁵.

III. Robust Technology Allows for Effective Supervision and Oversight, In Contrast to On-Site Inspections Which Result in Low Yield of Issues That Could be Identified Remotely

A. Background

In response to COVID-19 and State Executive Orders requiring shelter-in-place, and with the protection of our customers and employees being of paramount importance, Fidelity, like other member firms, suspended travel to branch office and other locations beginning in March 2020. Responding to the pandemic, in March FINRA issued Regulatory Notice 20-08 which provided temporary regulatory relief from the requirement to conduct onsite inspections of branch and non-branch locations, thereby allowing more flexibility to work from home. Since this time most of Fidelity's workforce has been working from home, and we have seen no material impact to our customers or the markets apart from the physical restrictions relating to visiting our branch offices due to COVID-related health concerns. Notably, as identified below, to date Fidelity has observed no noticeable difference in the quality of supervision, oversight, and inspections. In fact, the large-scale shift to working from home has provided us the opportunity to test our long-standing belief that remote supervision is as effective as onsite supervision primarily because the infrastructure (i.e., network, tools, and technologies), supervision and training can be implemented through a firm's secure electronic systems. Due to these technological capabilities, and because we had already implemented a limited form of work from home prior to this event, with minimal effort we were able to quickly enhance existing policies and procedures to expand the capability of our entire workforce to work from home during the COVID-19 pandemic.

As always, our supervisory controls are designed first and foremost for the protection of our customers and the integrity of the market, and we have found these enhanced procedures have allowed improved visibility and oversight of our representatives. Our experience has shown that advancements in technology, including that information is stored and accessed electronically through a firm's secure electronic systems, allows us to effectively supervise employee and customer activities leveraging technology, both during this current period and permanently.⁶ We would also note that utilizing technology to assist with supervision, including to conduct 3110(c) inspections, is not a "cost savings" exercise and that regulators concerns on this point are wholly unsupported. Firm personnel will continue to engage in supervisory activities and technology will need to be developed, maintained and enhanced to support a robust, digitally enabled supervisory structure. In addition, the time previously spent on travel

⁵ Indeed, even before the advent of COVID-19, there has been a recognition of the need to have more flexibility in work arrangements, including remote working locations, in order to attract and retain a diverse and flexible workforce, in particular for associated persons working in phone centers.

⁶ Fidelity, like other member firms, has been constantly and consistently utilizing advances in technology to enhance its oversight and supervisory controls. As described below, there is often very little, if anything, to physically review when conducting on-site inspections of offices. With respect to employee's working from home or other non-branch locations, the presence of filing cabinets containing required hardcopy records is no longer commonplace and business activities are generally conducted, and books and records are maintained, exclusively through a firm's electronic systems, which are subject to ongoing supervisory and surveillance review.

will be available for oversight and supervision. Moreover, as described below, in-person inspections yield no meaningful results and the pandemic has demonstrated that the old model is no longer tenable.

B. Technology-Assisted Branch and Non-Branch Office Inspections

With current technology firms can, and do, robustly supervise and oversee associated persons through the use of firm-authorized electronic systems and platforms. As opposed to in-person supervision, technology-assisted supervision is not dependent on where an employee is physically located – activities and communications with customers occur through firm-authorized and rigorously designed electronic systems and platforms. These systems and platforms are subject to ongoing supervisory and surveillance reviews, and provide supervisors the ability to conduct real-time reviews of securities transactions, money movement, electronic correspondence, customer survey responses, etc. Hardcopy records are no longer commonplace and, even for those interactions that may involve hardcopy records, the books and records of the transaction, activity or communication are maintained primarily through electronic systems. In fact, many hard copy records are scanned for electronic review, routing and storage immediately after receipt.

With respect to inspections required pursuant to FINRA 3110(c), Fidelity uses technology to conduct the following reviews effectively and efficiently:

- Safeguarding of customer funds and securities
- Maintaining books and records
- Supervision of supervisory personnel
- Transmittal of funds or securities
- Change of Address
- Review of customer communications
- Supervision of personal conduct (e.g. Outside Business Activities, Private Securities Transactions)

Importantly, these reviews can be conducted at any time, with or without notice, and from any location where the broker-dealer's electronic systems and platforms can be accessed.

C. On-site Branch Office Inspections

Despite being able to robustly supervise and inspect branch locations using available technology, FINRA and SEC rules nevertheless continue to require broker-dealers to perform on-site inspection of branches. Since Fidelity conducts robust supervision using centralized technology, we believe existing FINRA and SEC rules requiring the on-site inspections of registered branch offices are of limited value and identify issues that could equally have been identified remotely through technology such as a Zoom, WebEx, FaceTime and other video conference tools.

Today, an on-site inspection of a registered branch office typically consists of the review of the following items:

- The lobby
- The back-office, including, for example, the safe contents, checks and stock certificates held for less than 24 hours, sales literature and daily operations logs containing account applications
- Branch signage
- Physical security

These on-site branch office inspections are spent primarily discussing with the branch office manager items that have already been identified through technology-assisted reviews, which could be conducted equally well through video conferencing. Similarly, technology-assisted processes are available for reviews of lobbies, signage and back-offices.

D. On-site Inspections of Employees' Homes

Non-branch office locations, in particular employees' homes, have even less to review during the currently required on-site inspection. Employees' homes do not have publicly facing lobbies, signage, or back-offices to inspect; checks, securities and account documents are not received at employees' homes; customer meetings are not held in employees' kitchens. Instead, broker-dealer employees utilize company-issued laptops where they communicate with customers, generate and review customer documents and materials, and conduct activities that include videoconferencing. Firm systems identify the work being conducted over its systems and can identify when employees are remotely working. For phone center employees, they can connect to firm systems to service customers as seamlessly as being in a traditional branch office.

E. Historical On-site Inspection Findings

Our experience conducting nearly 900 branch inspections during the period 2017-2019 supports our view. Over that three-year timeframe these inspections produced only a de minimis number of minor findings (i.e., sales literature past expiration date, checks accepted that ultimately would not be processed when submitted, and miscellaneous items stored in the branch office safe). Digital technology could have facilitated these reviews with the same results: the inspection of sales literature use dates and the contents of the safe can be accomplished via a virtual walk around of the location and a conversation with the branch office manager and/or branch personnel. Current technology would capture checks submitted that could not be processed. In addition, video conferencing with the branch office manager provides the ability to have detailed, direct communication of inspection results.

With respect to non-branch office inspections, during 2019 Fidelity visited over 300 private residences, exempt from branch office registrations. The inspections produced a finding rate of less than 3 percent, the vast majority of which involved a single piece of sales literature that was past the expiration date held by Fidelity employees who meet with employees of institutional clients at those clients' offices. For employees working from home who do not have these in-person client relationships, the finding rate during this period was essentially zero. Physical on-

site examinations provide no additional supervisory benefit over and above off-site technology-assisted inspections that include a virtual walk-around of the location and a conversation with the representative, using Zoom or other video conference tools.

We appreciate that FINRA and the SEC have always been willing to work with the industry to evaluate and consider changes to rules, as evidenced by RN 20-08 and the Rule Extension. As noted above, we (and we believe most other firms in the industry) will not be able to complete 2020 on-site inspections by March 2021 as there is no certainty as to when travel and health restrictions will be lifted or when it will be deemed safe for our associates to travel on-site to certain locations. Accordingly, we urge FINRA and the SEC to permit remote, technology-assisted inspections.

Further, given the learnings coming out of COVID-19, we would also support a more comprehensive retrospective rule review of branch office registration and inspection requirements. Advances in communications and other technology, and other firm systems, including those used for remote supervision and surveillance, are substantial enough to warrant an even broader review of the definitions of branch office, office of supervisory jurisdiction and the inspection requirements that are attached to those designations, many of which we believe are obsolete.

Fidelity is happy to provide further information, participate in any direct outreach efforts the Division undertakes, or respond to questions you may have about our comments.

Sincerely,



Carrie L. Chelko
Chief Compliance Officer
Fidelity Brokerage Services LLC



Norman L. Ashkenas
Chief Compliance Officer
National Financial Services LLC
Fidelity Distributors Company LLC

CC: Robert Cook, FINRA
Bob Colby, FINRA