VIA ELECTRONIC MAIL (rule-comments@sec.gov)

July 28, 2020

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

Re: File No. SR-FINRA-2020-019

Dear Ms. Countryman:

This will serve as comments of Cetera Financial Group ("Cetera") with respect to a proposed rule change submitted by the Financial Industry Regulatory Agency, Inc. ("FINRA"). The proposed rule change would amend FINRA Rule 3110 to provide an extension of time for FINRA member firms to complete certain branch office inspections which would otherwise have been required to be completed in calendar year 2020. (The proposed amendments are set forth in File No. SR-FINRA-2020-019, and we will refer to them herein as the "Proposal".)

Cetera is the corporate parent of five FINRA member firms with approximately 5,300 branch offices and more than 7,500 registered representatives. The issues addressed in the Proposal are of vital concern to all FINRA member firms. We commend FINRA for proposing this rule change and support its approval. That being said, we do not believe that it goes far enough to realistically address the situation as it currently exists and respectfully suggest that both FINRA and the Commission should consider more comprehensive relief at this time.

Background

FINRA Rule 3110(c) sets forth requirements for internal inspections of branch offices by FINRA member firms. It requires that firms perform an inspection of each Office of Supervisory Jurisdiction ("OSJ") at least once per calendar year, of each non-OSJ branch office every three calendar years, and of each non-branch location on a periodic basis determined by an assessment of the member firm.

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In February 2020, the United States and many other countries began to take notice of what has become the COVID-19 pandemic. The facts of this public health emergency are well-documented and we will not dwell on them here, except to say that the pandemic has created a medical, financial, and logistical cataclysm of a type that the world has not experienced in nearly 100 years. Virtually every state in the U.S. has imposed some form of restriction on social interaction and the ability of individuals to travel, and many states have restricted the ability of individuals to cross their borders from other states without being quarantined for extended periods of time.[1] The majority of businesses in the United States literally ceased operating in March, 2020 and are only gradually beginning to re-open. These actions have been painful, but they have been necessary to reduce social interactions and limit the spread of the COVID-19 virus.

Despite the heroic efforts of many government agencies and dedicated medical professionals, the COVID-19 pandemic is not even remotely under control in the United States. Within the past week, several states have added additional restrictions on public activities and movement of individuals,[2] and the President of the United States has stated publicly that the situation is likely to get worse before it gets better.[3] It has been more than four months since state and local governments began instituting restrictions on public life, and we are not aware of predictions from any recognized medical authority regarding when those restrictions will end.

On March 9, 2020, FINRA took notice of the COVID-19 pandemic and issued guidance for member firms relating to Business Continuation Plans and adjustments to operating procedures.[4] Among other things, FINRA temporarily suspended the requirements of Rule 3110(c) to the extent that they required physical inspection of branch offices and gave FINRA member firms flexibility to conduct inspections of branch offices remotely. FINRA took these actions in recognition of the fact that the COVID-19 pandemic had made travel virtually impossible and that reducing the type of interactions inherent in physical branch office inspections was critical. FINRA also correctly noted that there was no way to predict when, or if, things would return to any semblance of normal. As we understand it, FINRA considered making the temporary suspension of the physical branch office inspection requirement in Rule 3110(c) open-ended, but opted instead for the approach set forth in the Proposal. An open-ended extension would have created flexibility to re-evaluate the situation as developments occurred, which we suggest was and is necessary given the unprecedented scope of the COVID-19 pandemic and complete lack of visibility about when it will be resolved. Indeed, we submit that there is no more clarity today about how or when the COVID-19 pandemic will end than there was in March when FINRA published its original guidance.

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[1] https://www.nytimes.com/2020/07/10/travel/state-travel-restrictions.html
[2] https://coronavirus.health.ny.gov/covid-19-travel-advisory and https://www.aarp.org/politics-society/government-elections/info-2020/coronavirus-state-restrictions.html
[3] https://www.forbes.com/sites/andrewsolender/2020/07/21/it-will-probably-get-worse-before-it-gets-better-trump-projects-rare-seriousness-about-virus-in-briefing/#7ea5dbfe6823
[4] See FINRA Regulatory Notice 20-08.

The FINRA Proposal

On June 19, 2020, FINRA submitted the Proposal to the Commission. It would add Supplementary Material 3110.16 to the text of Rule 3110(c) and provide for an extension of time through March 31, 2021 to complete physical branch office inspections otherwise required in 2020. We understand that FINRA is proposing this extension as an interim approach and may revisit the issue at some point in the future. Hopefully at that time the picture with respect to the COVID-19 pandemic will be more clear, and FINRA will be in a position to make a more informed prediction regarding when normal travel and other operations can resume. Interim measures are often the best that can be taken in unusual situations, but we submit that even now it is clear that the proposed extension is very unlikely to provide the necessary relief. We are hesitant to project a date on which travel can resume in the United States, but we believe there is a consensus that it will not be prior to January, 2021. The text of the Proposal recites the background of the COVID-19 pandemic and takes notice of the havoc that it has caused and continues to cause. FINRA specifically noted its' view that temporarily removing the requirement for physical inspections is not likely to have a significant negative impact on investor protection. We believe this is accurate, and should be a guiding principle for both the Commission and FINRA as they consider how to deal with the ongoing fallout from the COVID-19 pandemic.

The Impact of the COVID-19 Pandemic on Cetera and Other FINRA Members

As of this date, the Cetera broker-dealers have a total of approximately 5,300 branch office locations, all in the United States. Many are in urban areas, but a substantial percentage are in smaller cities that are far-removed from major airports. We have a comprehensive system for conducting physical branch office inspections, including a team of 25 professionals who are engaged full-time in this effort. All of these individuals are highly experienced and utilize a detailed protocol for review of activities conducted in branch offices. In a typical year, the Cetera examination staff performs approximately 2,400 on-site branch office inspections. Prior to the COVID-mandated shutdown in March 2020, the staff had completed slightly more than 400 of the 2,400 inspections that were scheduled for 2020, or approximately 17%. We have continued to perform branch inspections remotely through videoconferencing facilities that allow for visual contact with the branch personnel and joint viewing of documents and other materials.

The vast majority of the activities that are normally conducted in an on-site branch inspection can be effectively completed through readily-available technology. Indeed, the majority of supervisory oversight that is conducted by Cetera and most other FINRA member firms is already performed remotely. For example, new customer accounts are reviewed and approved by supervisory personnel located at the respective home offices of the Cetera broker-dealers. Surveillance of transaction activity, review and approval of transactions in variable annuities and many other investment products, review and approval of advertising material, and oversight of electronic communications are conducted by home office personnel who are not located in branch offices. There are very few aspects of branch office and sales practice supervision that require the physical presence of an examiner.

To date, Cetera has completed approximately 500 branch inspections through remote facilities in 2020, in addition to the approximately 400 that were conducted in-person. Review of those inspections shows that there have not been meaningful deviations between the the type or severity of findings noted in the remote inspections and the previous visits at those branches. We agree that physical presence during branch inspections is preferable, but our recent experience indicates that there is no discernible negative impact on investor protection resulting from the current inability to make physical visits.

Every FINRA member firm is different. They have their own branch networks of varying size and geographic scope, different staffing and business models, and varying supervisory processes. The Cetera broker-dealers are larger than the average FINRA member in numbers of registered representatives and branch offices, but we submit that our situation is not atypical. Most member firms will face the same logistical issues that Cetera will face in trying to complete physical inspections in their branch offices under the terms of the amendments in the Proposal.

Consider the following scenario:

- Assume that the COVID-19 pandemic is brought under control by January 1, 2021, at least to the extent that airline travel and hotel accommodations across the country become feasible. (We do not suggest that this will actually occur or even that it is a realistic estimate, but we believe it illustrates the position in which we find ourselves.)

- Cetera has completed physical inspections of approximately 400 of the 2,400 branch locations scheduled for 2020. This leaves approximately 2,000 physical visits that would need to be completed in the three-month period from January 1 to March 31, 2021.

- Inspections of many of our larger branch offices require the presence of multiple examiners over multiple days. It is not unusual for a team of three or more examiners to spend several consecutive days performing an inspection of a larger branch office.

- Cetera has a full-time staff of 25 branch examiners. In order to perform physical inspections of 2,000 offices in the span from January 1 to March 31, 2021, ***these individuals as a group would have to visit more than 31 office locations each business day, or more than one per examiner.***

- Cetera branch offices are located in all 50 states. Many are in rural areas that require travel by air and long-distance driving to reach. Counting travel and time spent in the branch, completing a physical inspection often takes a team member two to three days. In addition, many branch inspections require the presence of multiple examiners for multiple days, which further reduces the feasibility of competing all of them by March 31, 2021.

For Cetera to complete the balance of the inspections scheduled for 2020 in three months with the current staffing level is a virtual impossibility. Our circumstances may be particularly acute due to the number of branch offices, but we submit that most FINRA members firms will be in a similar situation. Branch office inspections require trained professionals with expertise on a wide variety of topics. It would be conceivable to send other firm employees to perform the branch inspections assuming that normal travel resumes, but they are not experienced in this area and are unlikely to produce a meaningful positive impact on investor protection. Hiring enough new examiners to perform these tasks in the time allotted would not be realistic either financially or logistically. There is simply no scenario in which it is realistic to assume that the inspections scheduled for 2020 can be completed in the compressed timeframe that the FINRA proposal specifies.

There Are Better Alternatives

As mentioned above, we appreciate FINRA's attempt to provide relief to member firms on this issue. An incremental approach to an unprecedented situation is often the most prudent course. That being said, we believe that anyone's ability to predict when the current situation will end is no better than it was when the COVID-19 pandemic began. The Proposal was submitted by FINRA on June 19, 2020. At that time, public perception regarding the possibility that the COVID-19 virus would be brought under control during 2020 was greater than it is today. In any event, we know with a high degree of certainty that extending the time period to complete the 2020 branch inspections through March 31, 2021 will not be sufficient. If the Proposal is adopted in its current form, FINRA member firms will be forced to plan for multiple contingencies, all of which involve several variables and require assumptions with very little in the way of reliable information on which to base them. FINRA, its member firms, and the Commission will be forced to go through this same exercise again in late 2020. We submit that would be wasteful and unnecessary, and that there are better alternatives.

We recognize that the Commission can only respond to what FINRA has proposed, and that the FINRA approach may offer the most that can be done at this time. We submit, however, that any extended date for completion of the 2020 inspection program is by definition arbitrary due to the lack of clarity about when travel can be resumed. Extending the date to March 31, 2021 will help, but even now it must be viewed purely as an interim measure. We support approval of the Proposal in its current form, but we believe that both FINRA and the SEC should consider alternative approaches now as additional relief. We propose one or both of the following:

1. Given the likelihood that restrictions on travel and social interaction will be in place in most of the United States throughout the remainder of 2020, it should be assumed that no additional physical inspections will occur during that time. In recognition of this, FINRA should submit and the Commission should approve an amendment which would allow member firms to satisfy the inspection requirements in Rule 3110(c) for all branches via remote means for calendar year 2020. This should be accompanied by a requirement that all member firms perform an assessment of the activities that occur at all of their branch locations to determine which offices should be given priority in scheduling physical exams as soon as that becomes practicable. The regime set forth in the Proposal would effectively require FINRA member firms to perform multiple inspections at the same branch offices in a nine-month time span in 2021, and in some cases less. Given the strains under which member firms are currently operating, we do not believe that the benefits of an additional inspection in 2021 outweigh the logistical difficulties they will create.

2. Alternatively, FINRA should submit and the Commission should approve an additional rule change which would provide that FINRA member firms would have one year from the date on which FINRA and/or the Commission determine that travel in the United States is feasible in which to complete the physical branch inspections that would otherwise have been required in 2020. This could be based on determinations from public health authorities or other governmental bodies, advice from medical experts retained by FINRA or the Commission, or other sources deemed reliable.

We appreciate the opportunity to comment on this important matter. If you have questions or we may provide any further information, please let me know.

Sincerely,

Mark Quinn

Director of Regulatory Affairs