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July 28, 2020

Via Electronic Mail

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

**RE: Comments on Proposed Rule Change To Temporarily Extend the Time To
Complete Office Inspections Under FINRA Rule 3110 (Supervision);
File No. SR-FINRA-2020-019**

Dear Ms. Countryman:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates, including Lincoln Financial Distributors, Inc., Lincoln Financial Securities Corp. and Lincoln Financial Advisors Corp., which are registered broker-dealers and FINRA member firms (“Lincoln”).¹ This letter is in response to FINRA’s proposed rulemaking to extend, until March 31, 2021, the deadline for FINRA member firms to complete their 2020 office inspections under FINRA Rule 3110.

While we appreciate FINRA’s effort to provide firms with additional time to comply with FINRA Rule 3110, the proposed extension does not go nearly far enough to provide adequate relief because it would require on-site inspections during the ongoing COVID-19 pandemic and thus put member firms’ employees and others at serious risk. It would also require on-site “re-inspections” of offices where an effective remote inspection occurred in 2020. At Lincoln, our foremost priority is protecting the health and safety of our employees, financial professionals,

¹ Lincoln Financial Distributors, Inc., is a wholesale broker-dealer distributor of variable and fixed insurance products. Lincoln Financial Securities Corp. and Lincoln Financial Advisors Corp. are retail broker-dealers and investment advisers.

and customers. COVID-19 infections are rising in many parts of the country, and on-site inspections—which typically involve air and other travel and many in-person interactions—are currently not safe and may not be for an extended period.

In response to the serious health risks arising from the COVID-19 pandemic, Lincoln, like many other firms, has been operating almost entirely remotely since March. This includes conducting branch office inspections remotely, which has proven highly effective. Leveraging technology, we have been able to conduct inspections remotely and meet our regulatory requirements under FINRA Rule 3110 while also protecting the health and safety of our employees, financial professionals, and others. This approach also takes into consideration the fact that many of the personnel in the branch offices being inspected have been working remotely since March, when the serious health risks relating to COVID-19 became widely known.

As an alternative to FINRA’s approach in SR-FINRA-2020-019, we propose that during 2020, and until the COVID-19 pandemic has subsided, the SEC and FINRA permit remote inspections that are reasonably designed to comply with FINRA Rule 3110. Without relief that permits inspections to be conducted remotely, at least on a temporary basis, firms would have to put their employees, and potentially others, in harm’s way to meet their regulatory requirements. Our proposal, on the other hand, would address the serious health risks arising from the ongoing COVID-19 pandemic while also ensuring that important investor protection functions continue to be performed through well-designed and executed remote inspections.

Remote Inspections Address Both the Serious Health Risks Posed By COVID-19 and the Important Investor Protection Policies Underpinning FINRA Rule 3110

To date in the United States, there are 4,296,461 confirmed cases of COVID-19, and there have been 148,076 deaths caused by the virus.² Some parts of the country continue to see increases in positive COVID-19 tests, and the death toll continues to rise. Unfortunately, the risks arising from travel and in-person interactions have not abated but rather have gotten more severe in many places. To its credit, the SEC has recognized the unprecedented health hazards and strains the pandemic has imposed on normal business operations. For example, the SEC’s examination teams have been conducting effective remote examinations since March 2020.³

² See *Johns Hopkins University Coronavirus Resource Center* (July 28, 2020), available at <https://coronavirus.jhu.edu/>. Globally, as of July 28, 2020, there are 16,523,029 confirmed COVID-19 cases and 654,860 confirmed deaths. *Id.*

³ See Securities & Exchange Commission, *OCIE Statement on Operations and Exams—Health, Safety, Investor Protection and Continued Operations are our Priorities* (Mar. 23, 2020), available at <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor->

And on June 26, 2020, the SEC stated that it is focused “first and foremost, on the health and safety of [SEC] employees and all Americans.”⁴

Lincoln has approximately 1,500 office locations across 49 states that are subject to FINRA Rule 3110 inspections. In a normal year, Lincoln completes approximately 450 to 550 branch office inspections that include on-site components. If on-site inspections were conducted in the current COVID-19 environment, the Lincoln office inspection team and the personnel in our branch offices, and potentially their family members, would be subjected to significant health and safety risks. By way of illustration:

- Visits to most offices would require air travel involving employees spending significant amounts of time in “high risk” environments like airports;⁵
- Approximately 40% of our inspection team members are at higher risk for severe illness due to their age;⁶
- Certain of our inspection team members live in households and/or serve as caregivers for family members who may be at increased risk for severe illness from COVID-19 due to existing medical conditions;
- Some of our financial professionals are at higher risk for severe illness due to age or existing medical conditions;
- Approximately 20% of Lincoln’s branch offices are in states, such as CT, MA, NY, and FL that require people entering from certain other states to quarantine for a certain

protection-and-continued (“[i]n light of health and safety concerns and other circumstances, OCIE has moved to conducting examinations off-site through correspondence, unless it is absolutely necessary to be on-site.”)

⁴ See Securities & Exchange Commission, *An Update on the Commission’s Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets* (June 26, 2020), available at <https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants>.

⁵ See Cedars-Sinai Staff, *Is it Safe to Travel During the COVID-19 Pandemic?* (July 10, 2020), available at <https://www.cedars-sinai.org/blog/travel-advice-covid-19.html> (quoting Dr. Michael Ben-Aderet, an infectious disease specialist at Cedars-Sinai, saying “Airports are a high-risk area because you have a lot of people from different areas moving through a central location . . .”).

⁶ The risk of severe illness from COVID-19 increases with age, with older adults at highest risk. See Centers for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* (June 25, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>. People over 60 years old are, in general, at higher risk for severe illness than younger people. *Id.* Forty percent of the members of Lincoln’s inspection team are at least 60 years old.

period, in most cases 14 days.⁷ Another approximately 35% of Lincoln’s branch offices are in states that urge, but do not yet require, people entering from certain other states to quarantine or distance from others after they enter the state.⁸ As conditions change, other states could impose similar quarantine requirements.

In transitioning to an all-remote inspection model, Lincoln has sought to address these serious health concerns. We have also found that well-designed remote inspections are highly effective. Since March, we have diligently continued to inspect branch office operations, using our remote model, in accordance with FINRA Rule 3110.

FINRA Rule 3110(c) requires member firms to “conduct a review, at least annually” that is “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.”⁹ The rule does not contain an explicit “on-site” requirement, and in prior years, without the technology solutions that have become available, it might have been more difficult for firms to satisfy FINRA Rule 3110 without reviewing records on-site.¹⁰

The technology used today, however, enables remote inspections that can satisfy the requirements of FINRA Rule 3110. In the last decade, substantial portions of office records have transitioned to digital formats, and, even before COVID-19, our inspection team had begun reviewing many of these materials electronically.

Our inspection team can remotely access technology platforms that maintain data on customer profiles, purchases and sales of securities, suitability and best interest determinations, blotters, marketing materials, statements and confirmations, and other records. The inspection team can also obtain scanned copies of records remotely, use virtual private networks to access

⁷ See MultiState, *COVID-19 Policy Tracker* (July 28, 2020), available at <https://www.multistate.us/pages/covid-19-policy-tracker>. Twelve states and the District of Columbia have mandatory quarantine restrictions for at least certain travelers. In addition, 19 other states have issued guidance urging quarantine or distancing for at least certain travelers. *Id.*

⁸ *See id.*

⁹ See FINRA Rule 3110. Supervision, available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110>.

¹⁰ The on-site component of office inspections is not based on Rule 3110(c), but rather on guidance from the FINRA and SEC staffs, that can and should be revisited, that “[a] broker-dealer must conduct on-site inspections of each of its office locations” See FINRA Reg. Notice 11-54, Branch Office Inspections at 6 (Nov. 2011), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>.

associated persons' computers to view records, and interview financial professionals and other local personnel via videoconference. In addition, Lincoln monitors branch office compliance with information security policies remotely, and the inspection team can remotely audit for compliance with information security standards such as firewalls, patching, encryption, and antivirus protocols.

Our experience during the COVID-19 pandemic is that remote inspections are more effective than on-site inspections would be, considering that many of the physical offices subject to FINRA Rule 3110 inspections are not currently being used due to ongoing health and safety concerns.¹¹ When compared to the on-site inspections we conducted in the first quarter of 2020, the remote inspections we conducted in the second quarter of 2020 resulted in a comparable number of findings per financial professional. Moreover, from a risk and investor protection perspective, we have found that there are advantages to conducting remote inspections because the time that our field inspection team normally would have to spend traveling can be used to review branch office materials. Working remotely, our field inspection team is making compliance findings, completing remediation plans, and exercising a high degree of supervision consistent with FINRA Rule 3110. Our field inspection team will continue to be effective conducting inspections remotely until the COVID-19 pandemic has subsided.

Aside from the health and safety concerns, given the effectiveness of remote inspections, it would be extremely inefficient, as well as contrary to investor protection, to require firms to go back and conduct on-site inspections, by March 31, 2021, of branch offices for which they have already completed effective remote inspections in 2020. Lincoln conducted 67 inspections with on-site components between January 2020 and March 2020 before COVID-19 emerged. We are on track to complete an additional 521 inspections this year using our all-remote inspection model. If required, by March 31, 2021, to go back and "re-inspect," with an on-site component, the 521 branch offices that we inspected remotely in 2020, it would cause an enormous burden by roughly doubling, to over 950, the number of inspections we would need to conduct next year. This would strain resources and likely divert some focus away from the inspections scheduled for 2021, which deserve our undivided attention and resources. Finally, and in any event, given the surge in COVID-19 cases in many parts of the country, it seems unlikely that widespread travel and in-person interactions will be safe for some time, meaning that the March 31, 2021 date appears to be inconsistent with the evolving COVID-19 situation across the country.

¹¹ Even where branch office personnel are working from their branch's physical office space, some may be understandably unwilling to interact with inspection team members as part of an in-person, on-site inspection in the current COVID-19 risk environment.

Conclusion

Neither Lincoln nor any other firm in the industry should have to choose between compliance with the federal securities laws and the health and safety of its employees. Remote inspections are effective with the technology that is currently available, and remote inspections appropriately balance the significant COVID-19 health risks and the important interest in investor protection. We respectfully request that the SEC and FINRA permit remote inspections that are reasonably designed to ensure compliance with the securities laws and rules through 2020 and until the COVID-19 pandemic has subsided.

Finally, Lincoln supports the comment letter submitted by the Securities Industry and Financial Markets Association (“SIFMA”) regarding FINRA’s proposal.

We would be happy to provide additional information or assist in any way we can in connection with these important issues.

Sincerely,

A handwritten signature in black ink that reads "Will H. Fuller". The signature is written in a cursive, flowing style.

Will H. Fuller

EVP, President

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