



February 16, 2021

Ms. Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006

**Re: Lessons from the COVID-19 Pandemic (Regulatory Notice 20-42)**

Dear Ms. Mitchell:

The American Securities Association (“ASA”)<sup>1</sup> welcomes this opportunity to provide input on the Financial Industry Regulatory Authority’s (FINRA) request for comment regarding the experiences of broker-dealers and regulators during the COVID-19 pandemic. We appreciate FINRA’s ongoing efforts to periodically review its regulatory and examination efforts to improve its effectiveness as a self-regulatory organization.

As with virtually every other industry, ASA members have had to significantly alter their operations over the last twelve months in response to the pandemic. Offices were left empty as employees began to work remotely, but ASA members have adjusted to the new virtual world from both an operational and compliance standpoint. We expect that in some cases remote work arrangements will become permanent even after the pandemic recedes, meaning that FINRA and other regulators will have to update existing regulations or provide guidance to assist firms with compliance.

FINRA has requested feedback on whether any additional “guidance, tools, or resources are needed to assist member firms as a result of changes to their business operations.” We offer the following recommendations in response to this request:

- FINRA should clarify Rule 3110 does not ultimately require the physical inspection of an employee’s home. Brokers have already successfully adapted their compliance procedures to supervise employees remotely - an expectation that an employee’s home be physically inspected would be a fundamental violation of privacy and be

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<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





counterproductive to the goals of Rule 3110. Instead, FINRA could establish clear and reasonable guidelines for the remote inspection of work-from-home arrangements.

- Additionally, FINRA should allow broker-dealers the flexibility to determine when it is appropriate to conduct inspections remotely – whether it involves a work-from-home office or a physical branch location. Given the ability in some instances to electronically examine documents and trade records, inspections done remotely can be just as effective as those done in-person. This is consistent with a recommendation issued by the Securities and Exchange Commission’s Asset Management Advisory Committee (AMAC) in November 2020.<sup>2</sup>
- FINRA should work collaboratively with the Securities and Exchange Commission (SEC) to develop changes to Regulation S-P.<sup>3</sup> Regulation S-P mandates that firms have policies and procedures designed to “address administrative, technical, and physical safeguards for the protection of customer records and information.” These policies include ensuring the security and confidentiality of customer records and protections against unauthorized use of customer records. This raises questions as to how these requirements will apply in the context of remote working, particularly for small and mid-size broker dealers that may have limited technological capabilities relative to their larger counterparts.

For some brokers and their employees, the COVID-19 pandemic has permanently changed the manner in which they operate. We believe that FINRA should work closely with the SEC to update its rules as necessary to accommodate that reality. The ASA and its member firms appreciate this opportunity to comment and look forward to working with you on this important topic.

Sincerely,

Kelli McMorro  
Head of Government Affairs  
American Securities Association

<sup>2</sup> [Preliminary Recommendations of Operations Panel Regarding COVID-19 Operational Issues \(sec.gov\)](#) “The AMAC recommends that the SEC work with FINRA to modernize the internal inspection requirements of FINRA Rule 3110(c) to provide firms the flexibility to conduct remote technology-assisted inspections.”

<sup>3</sup> The AMAC also recommended a similar initiative: “Additionally, the AMAC recommends that the SEC amend its rules, and work with FINRA to amend its rules, to replace requirements in the regulatory text to provide or send investors “written notification” or notification “in writing” of certain documents or disclose certain information, with a requirement to “furnish” or “provide” such documents, which recognizes transmittal through digital means and addresses application of the E-Sign Act.”

