

February 16, 2021

Via E-Mail

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 20-42
FINRA Seeks Comment on Lessons From the COVID-19 Pandemic**

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to FINRA Regulatory Notice 20-42 *FINRA Seeks Comment on Lessons From the COVID-19 Pandemic* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on December 16, 2020.² The Notice solicits comment on firms' experiences and lessons learned during the COVID-19 pandemic. FINRA also seeks comment on rules or rule sets, and/or their administrative processes, that would benefit from a retrospective rule review based on firms' experiences during the pandemic.

BACKGROUND

As indicated in the Notice, in response to the COVID-19 pandemic, firms made rapid and unprecedented changes to their business operations in order to prioritize the health and safety of firm personnel and investors, while maintaining the public's access to capital markets. FINRA identifies these changes as including the widespread use of remote offices and alternative work arrangements and new and expanded methods of engaging with personnel and investors. Firms also used new methods of engaging with FINRA and other regulators and complying with regulatory requirements. In addition, FINRA issued various pieces of guidance (e.g., communications and frequently asked questions) and temporary rule amendments throughout the COVID-19 pandemic to provide guidance and relief for firms, associated persons and other individuals.

While the COVID-19 pandemic continues, FINRA requests feedback on firms' experiences during the pandemic, including how firms' operations and business models may have changed, both during the current health crisis and potentially going forward. FINRA further requests comment on whether it should consider changes to its rules, operations or administrative processes to

¹ The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 31 member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

² The Notice is posted at <https://www.finra.org/rules-guidance/notices/20-42>.

address lessons learned during the pandemic or to address anticipated long-term impacts of the pandemic on firms and investors.

COMMITTEE COMMENTS

The Committee thanks FINRA for its efforts during this unprecedented time, and the Committee appreciates the opportunity to share its experiences and lessons learned from the COVID-19 pandemic. The Committee is also pleased that FINRA has undertaken a review of its rules that would benefit from a retrospective rule review based on firms' experiences during the pandemic. In addition, the Committee offers the following specific comments in response to the Notice.

Remote Office Inspections. The Notice requests comment on the use and effectiveness of remote inspections.

Rule 3110(c) requires firms to perform inspections of all locations from which associated persons regularly conduct businesses, which includes remote work locations. Recognizing that health and safety concerns and state orders significantly curtailed firms' ability to conduct on-site inspections, FINRA adopted temporary Supplementary Material .16 (Temporary Extension of Time to Complete Office Inspections) under Rule 3110 to extend the time by which firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021. As the COVID-19 pandemic persisted, FINRA adopted temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) to provide firms the option, subject to specified requirements under the supplementary material, to complete remotely their calendar year 2020 and calendar year 2021 inspection obligations under Rule 3110(c), without an on-site visit to the office or location.

The Committee supports a permanent change to Rule 3110(c) to provide firms with additional flexibility in conducting on-site and remote inspections. Further, Committee members believe that firms should have additional discretion to determine, based on a risk-based analysis, whether and when to conduct on-site or remote inspections for particular firm offices going forward. A risk-based approach with respect to type of inspection and inspection schedules would alleviate the burden on firms with respect to performing on-site inspections on oftentimes numerous low-risk locations. Firms could keep records on the types of factors and risks considered in making such determinations, including the type of business conducted, the level of interaction of the office and its personnel with retail customers, and access to client information and records. In the alternative, as Committee members have found that these types of low-risk locations rarely, if ever, benefit from an on-site inspection, FINRA could simply remove the on-site inspection obligation for offices with these characteristics from the rule's coverage.

Definition of Office of Supervisory Jurisdiction (OSJ) and Branch Office. The Notice requests comment on the utility of current office definitions.

FINRA Rule 3110(f) sets forth the definition of an "Office of Supervisory Jurisdiction" (OSJ) and "branch office," and specifies seven exclusions (or non-branch locations) from the branch office definition. Firms must register each branch office, and indicate, among other things, whether it is an OSJ. By designating an office or location as a branch office, firms have heightened supervisory responsibilities, including more frequent inspections.

Committee members have encountered heightened challenges with categorizing locations in light of the current remote working environment. As a result, Committee members request that FINRA provide clarification on branch office registration requirements for remote locations as well as the permitted activities at each such location.

In addition, Committee members request that FINRA reconsider the branch office and OSJ definitions to exclude certain activities from being deemed any type of office, even a non-branch office. The Committee requests that FINRA amend the definitions of OSJ and branch office to recognize the reality of the use of remote offices and alternative work arrangements following the pandemic, and allow such work venues to be permitted as work locations without triggering any type of office registration.

Remote Qualification Examination. The Notice requests comment on insights from the experience with qualification examinations during the pandemic.

As FINRA indicates in the Notice, due to health and safety concerns, testing center closures and capacity issues, it provided relief to persons seeking to take qualification examinations. In particular, FINRA extended open examination enrollment windows and extended the period for persons to function as principals or operations professionals without passing the appropriate qualification examination. FINRA and the North American Securities Administrators Association (NASAA) have coordinated to deliver an online testing service for candidates seeking to take FINRA's Securities Industry Essentials (SIE), Series 6, and Series 7 exams and NASAA's Series 63, Series 65 and Series 66 exams remotely.

The Committee generally supports the provision of remote examinations for these qualification exams and supports the continuation of online testing after the pandemic. Given the success of these exams and advances in testing technology, Committee members urge FINRA to expand remote examinations to all qualification examinations.

Engaging with FINRA and FINRA Processes. The Notice requests comment on whether the pandemic conditions have highlighted further changes needed to FINRA communication processes, methods of engaging with firms or related procedural requirements in FINRA rules.

Throughout the COVID-19 pandemic, FINRA and firms were impacted by the challenges associated with remote working, including the global and national disruptions to mail service. As a result, FINRA and firms leveraged new technologies to carry out their regulatory obligations and responsibilities to investors. FINRA also provided firms with additional flexibility during examinations, regulatory filings, and other communications. Critical to this flexibility was the use of e-delivery and e-signatures.

The Committee appreciates FINRA's efforts in this area and notes that the success of these measures, such as e-delivery and e-signatures, highlights the increased opportunities within the industry to leverage technology while still meeting various regulatory obligations. Committee members request that FINRA consider these successes when making further technology-driven changes to the existing regulatory framework.

Based on these successes, the Committee further urges FINRA to work with other regulators to adopt rules and amendments - such as a modernized e-delivery framework - that would reflect changes in technology and how investors access information while also maintaining the important interests in investor protection and disclosure. The Committee recognizes that such a request is outside the scope of any specific FINRA rule, but believes that FINRA may be well-positioned to play a role in advancing these efforts with other regulators.

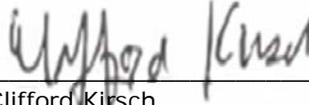
CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: 
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FOR THE COMMITTEE OF ANNUITY INSURERS