

February 16, 2021

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

**RE: Regulatory Notice 20-42: Retrospective Rule Review: FINRA Seeks Comment on Lessons From the COVID-19 Pandemic**

Dear Ms. Mitchell:

In its Regulatory Notice 20-42 (“RN 20-42”), the Financial Industry Regulatory Authority, Inc. (“FINRA”), solicited comments regarding the lessons firms have learned throughout their experiences in responding to the COVID-19 pandemic.

Commonwealth Financial Network (Commonwealth) is an independent broker/dealer and an SEC registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California, and more than 2,000 registered representatives who are independent contractors conducting business in all 50 states.

Commonwealth welcomes and appreciates the opportunity to provide general comments and answers to specific questions posed in RN 20-42.

**General Comments**

The global pandemic, which is now more than 11 months long, has evolved the conventional workforce in ways that were previously unthinkable – Firms with hundreds or thousands of employees who used to work from centralized locations now work almost exclusively from home, and are doing so with little if any business interruption. While there are certainly benefits to working in an office with colleagues and many will seek to return to in-office work when it is safe to do so, the convenience of working remotely and the ease at which it can now be done, without missing out on a meeting, interview, or phone call, will likely lead to the need for businesses to remain flexible in their “work from home” arrangements if they want to hire and retain top talent. This notion applies to a myriad of industries, not just the financial services business.

In what would have normally taken years of planning and testing, the technical evolution that our industry experienced in a matter of just a few weeks was astonishing. The wide-spread availability and capabilities of digital platforms provided firms the means to continue to remain in business while

employees work from virtually anywhere. Suffice to say the global pandemic has expedited the modernization of the corporate workplace, and the securities industry's rules and regulations need to be enhanced to keep pace. Specifically, firms should be able to construct reasonable oversight programs to ensure their employees and advisors are adhering to industry rules and firm policies without having to conduct mandatory onsite inspections of their remote office locations or personal residences. Moreover, it is time that FINRA modernize the definition of "branch office" and "Office of Supervisory Jurisdiction" to exclude the primary residence of a firm's associated persons who meet certain reasonable criteria, as discussed more fully below.

Additionally, FINRA should make the relief provided to member firms, as it relates to remote inspections, permanent. Commonwealth has historically completed upwards of 80% of our inspection processes prior to visiting a branch location. While certain elements of our inspections have routinely been conducted onsite, such as the review of an advisor's financial records, conducting the annual compliance meeting, reviewing physical signage, performing an information security check, and conducting a general walk-through of the office, the pandemic has provided unique and effective opportunities to experiment with numerous methods of accomplishing virtually all aspects of our inspection program remotely. All of the requirements for inspections described under Rule 3110(c)(2) and 3110(c)(3) can be reasonably accomplished remotely, providing enormous cost-savings to firms without putting staff, advisors or investors at risk. In fact, the significant increase in productive work time that our firm has experienced with the substantial reduction in staff travel has provided us the ability to expand our oversight programs by spending more time analyzing greater amounts of data than our onsite inspection programs have ever afforded.

## **Response to Questions Raised in RN 20-42**

### **Business continuity Plans (BCP)**

- 1. What has been your experience with implementing Rule 4370 during the pandemic, including any ambiguities in the rule or challenges to comply with it?**

A: The technology and infrastructure that Commonwealth already had in place prior to the pandemic provided our firm with the means to comply with FINRA Rule 4370 without much additional work, allowing our firm to transition to a 98%+ work from home environment virtually instantaneously. In our view the rule provided firms with sufficient guidance and flexibility to craft a plan that met their business needs.

- 2. Should FINRA consider any amendments to Rule 4370 to address issues raised during the pandemic?**

A: Commonwealth does not have any suggestions for amendments to rule 4370.

**3. Did your firm's BCP plan directly or indirectly address the circumstances of the pandemic?**

A: Yes, Commonwealth's BCP plan did account for a potential global health pandemic. Our BCP plan together with our firm's ability to implement firm-wide technology solutions designed to accommodate remote work requirements, were found to be effective.

**4. Did your firm make or does your firm plan to make any changes to its BCP in response to the pandemic?**

A: Commonwealth's plan left us well prepared and did not require any changes in response to the pandemic. We are, however, planning on carrying out testing simulations on different black elephant types of events on a more periodic basis going forward.

**5. Does your firm annually test its BCP? If so, are there any changes to testing warranted given what your firm has learned during the pandemic?**

A: Yes, Commonwealth conducts annual BCP testing and will be enhancing its testing schedule and conducting various simulations on an ongoing basis.

## **Remote Offices, Alternative Work Arrangements and Remote Inspections**

**6. Are additional guidance, tools or resources needed to assist member firms as a result of changes to their business operations?**

A: Commonwealth thanks FINRA for providing certain relief and ongoing guidance to member firms during the early months of the pandemic. As detailed further in our responses below, Commonwealth encourages FINRA to make permanent some of the temporary relief provided, as well as amend the definition of an OSJ to exclude locations where home office employees are exclusively using the firm's virtual private network (VPN), systems and tools to perform supervisory and oversight functions from their personal residences.

**7. Does your firm anticipate continuing to allow use of remote offices or alternative work arrangements by some personnel after the pandemic? If so, are there any ambiguities or challenges with FINRA rules that may prevent transition to broader use of remote offices or alternative work arrangements, including intersections with other laws or regulations?**

A: Yes. In fact, it is imperative that we provide remote work flexibility to employees going forward in order to retain top talent, keep pace with peers in and outside of the securities industry, and continue to gain efficiencies to improve the overall effectiveness of our processes. Our staff have proven to not only work as effectively in a remote environment, but for many of them the avoidance of a commute has meant they've been able to improve productivity *and* spend more time with family or attending to personal matters. The benefits of this increased flexibility cannot be overstated.

**8. Should FINRA consider any amendments to the branch office and OSJ definitions in Rule 3110? If so, what amendments do you suggest?**

A: Yes. Commonwealth urges FINRA to modify the definition of an OSJ in Rule 3110(f). Commonwealth operates primarily under a centralized supervision model, meaning most of our financial advisors are supervised directly by registered principals in the Account Supervision, Trading, Operations, and Compliance departments of the home office which acts as the OSJ.

Given this model, over 120 home office principals conduct this important work, and all have been doing so from remote locations for the past 11 months. These employees must log on to our firm's VPN and must use firm applications exclusively to complete their work. Critically, staff use the same firm systems and applications they would be using if they were physically located in the home office, including systems that facilitate the approval of new accounts, review and endorsement of customer orders, approval of retail communications, and general supervision of our advisor's activities. Moreover, for well over a decade Commonwealth has used a case management and workflow system which eliminates the need for staff to handle or store physical records.

Since the onset of the pandemic these types of activities are conducted almost exclusively at employees' homes. If FINRA Rule 3110(f)(1) is not modified to address what has become common practice at firms throughout the country, member firms will be required to register each of these employees' personal residences as OSJs and subject them to inspections on no less than an annual basis if they wish to continue to operate in this manner. Requiring firms to conduct annual inspections of their employee's homes, when the employees are using company-issued equipment, systems and applications in the same manner they would do so were they physically in the office is intrusive, overly burdensome, costly, and serves no legitimate purpose in support of investor protection. It is vital that FINRA provide firms the flexibility to develop and implement reasonable oversight processes that permit these types of activities to occur in light of the nature of the safeguards described herein.

It is time to modify the definition of an OSJ to explicitly exempt primary residences used by employees of member firms when they are performing supervisory functions exclusively through firm's approved systems and applications. Doing so will allow firm employees the flexibility they need to work from their homes, provide the means for firms to continue to hire and retain top talent, and give firms the resources they need to direct their compliance efforts towards more valuable endeavors and legitimate areas of risk.

**9. If your firm has inspected any branch office remotely, did your firm experience any challenges conducting the remote inspection? What criteria does your firm use to determine whether a remote or onsite inspection is appropriate for a location?**

A: Commonwealth has long taken a risk-based approach when compiling our annual audit schedule, and we followed a similar approach when we compiled our remote audit schedule.

The criteria we consider is based on a wide variety of factors and data points including but not limited to, advisor tenure with the firm, complaint and disciplinary history, the type and nature of prior deficiencies, financial records reviews, electronic communication reviews, outside business activity reviews, business mix, and other advisor information.

**10. What methods has your firm used to conduct remote inspections?**

A: The primary methods used to conduct remote exams are largely the same as our onsite examination program. It consists of an examiner reviewing prior inspection history, production reports, and myriad other data and documents prior to initially engaging with the office. An interview with the advisor is then conducted, following which additional documents are requested. In a remote environment we've done these interviews over Zoom and have requested certain hard copy documents and records be imaged and uploaded to our system such as financial records and other records maintained by the advisor in hard-copy format.

It is worth noting that we've seen significant benefits to being able to conduct these inspections remotely. We've been able to redirect the time staff previously devoted to travel to spending additional time interacting with advisors and their staff, delving into more data analytics, and reviewing a greater volume of books and records. Importantly, these remote inspections have allowed our firm to allocate scarce compliance resources in a more meaningful and effective way, and we implore FINRA to provide continued flexibility in this regard going forward.

**11. What methods has your firm used to supervise personnel working remotely? What business changes have you made in order to comply with supervision requirements?**

A: Commonwealth has long since required all of its associated persons and home office staff to process all business solely through firm-approved applications, tools and systems. As such, Commonwealth has not had to make any material changes to its business in order to comply with its supervision requirements.

**12. Has your firm experienced any challenges supervising personnel working remotely? If so, in what particular areas?**

A: No.

**Engaging with FINRA and FINRA Processes**

**13. Should FINRA consider any changes to rules or their application, administrative processes or operations for more effective engagement among member firms, firm personnel, investors and FINRA staff?**

A: Commonwealth encourages FINRA to work with the SEC and the states to allow the Form U4 application and all subsequent amendments to be signed by the registered person electronically. Congress passed the Electronic Signatures in Global and National Commerce Act ("E-Sign Act") in 2000 to facilitate the use of electronic signatures in interstate commerce. The E-

Sign Act provides, among other things, that a signature may not be denied legal effect, validity, or enforceability solely because it is in electronic form. In the more than 20 years since Congress passed the E-Sign Act, virtually every major industry in the United States has embraced the use of electronic signatures. The time to allow associated persons of FINRA member firms to execute Form U4 via electronic signatures is long overdue.

**14. Can FINRA make its procedural rules, guidance or attendant administrative processes more efficient and effective? If so, how?**

A: Commonwealth has no specific recommendations..

**15. Should FINRA consider further expanding its use of standardized requests for data routinely requested from firms as part of FINRA's examinations to permit more effective remote inspections and reduce uncertainty to firms?**

A: Commonwealth was subject to a routine regulatory examination by FINRA during the pandemic and experienced no difficulties or complications with our engagement with FINRA staff. We encourage FINRA to consider further expanding its use of standardized requests for data as part of FINRA's examinations.

**16. FINRA's rules and programs are only part of a broader framework of securities laws, rules and regulations that govern or affect member firms. Are there requirements from other regulators for which FINRA has a role in administering that could be made more efficient or effective (or that have been challenging to comply with during the pandemic)?**

A: Commonwealth has no specific recommendations at this time.

### **Qualification Examinations**

**17. What have candidates' experiences been with taking qualification exams in test centers or online during the pandemic?**

A: FINRA's development of online qualification exams was well received by our test takers. Some users provided feedback early on that when they experienced issues within the system they were unable to get help and subsequently had to retest. Those issues appear to have been addressed. Given the continuing limited availability of testing center appointments, the online delivery of tests provides candidates with flexibility to test at their convenience.

**18. Should FINRA consider retaining or expanding online delivery of qualification exams after the pandemic?**

A: Yes. Commonwealth supports and encourages FINRA to expand its online delivery of qualification exams.

**19. What has been your experience with the extension of the period for persons to function as principals or operations professionals without passing the appropriate qualification**

**examination, as provided for in SR-FINRA-2020-026 (and any extension thereof), including any challenges or benefits of the extension?**

A: Commonwealth did not have to leverage the extension allowed under the relief provided by FINRA.

## **Investors' Experiences**

**20. What impacts on investors, if any, have resulted from pandemic-related changes to member firms' operations and business models? For example:**

- a. Have investors experienced any difficulty accessing their funds or securities during the pandemic?**
- b. Have investors experienced any challenges in communicating with registered representatives or member firms during the pandemic?**
- c. Which other customer services, if any, were impaired in material ways during the pandemic?**

A: Commonwealth was able to implement our BCP and transition to a 98% remote workforce with no business disruption. Other than this remote transition, our operations and business model continue to function as they did pre-pandemic and the firm is not aware of any adverse effect our remote work has had in investors ability to access their funds or communicate with their registered representatives.

**21. What feedback have investors provided concerning pandemic-related changes to member firms' operations and business models?**

A: N/A

**22. Have investors requested any changes to firms' business processes or procedures in light of the pandemic environment?**

A: No

**23. What changes in retail investor behavior, if any, have been observed during the pandemic? Similarly, what changes, if any, in institutional investor behavior have been observed during the pandemic?**

A: Commonwealth has made no specific observations regarding changes in investor behavior as a result of the pandemic.

**24. Have firms implemented new or additional investor protection measures during the pandemic?**

A: No

## General Effectiveness, Challenges and Economic Impact

**25. What have been the economic impacts, including costs and benefits, of the rules mentioned above? To what extent do the costs and benefits have a disproportionate impact on firms based on size and business model? Have the rules led to any negative or positive unintended consequences?**

A: As stated above, we've seen significant benefits in conducting remote inspections. We've been able to redirect the time staff previously devoted to travel to spending additional time interacting with advisors and their staff, delving into more data analytics, and reviewing a greater volume of books and records. Importantly, these remote inspections have allowed our firm to allocate compliance resources in a more meaningful and effective way.

**26. What unintended consequences, if any, during the pandemic have arisen as a result of FINRA's rules or FINRA's application of its rules?**

A: As mentioned above, Commonwealth believes FINRA should amend the definition of an OSJ under FINRA Rule 3110(f)(1) to avoid the potential unintended consequence of having to register personal residences of home office employees engaged in supervisory activities. Registering these locations or requiring these employees to work exclusively from the home office would both have negative consequences to member firms.

**27. Are there any ambiguities in the rules that FINRA should address to aid firms while ensuring investor protection concerns are addressed?**

A: No

**28. Did any group or subset of investors, associated persons of member firms or candidates for qualification exams experience any difficulties or challenges due to a lack of access to the connectivity or other technology necessary to avail themselves of online services or assistance?**

A: Commonwealth is unaware of any specific issues.

Commonwealth appreciates the opportunity to provide comments to RN 20-42. We believe all firms, regardless of size, have learned valuable lessons as a result of this pandemic and applaud FINRA's efforts to engage member firms in conducting this retrospective.

If you have any questions or would like additional information on our comments, please do not hesitate to contact me at 781-663-9615. Thank you for your consideration.

Sincerely,

Matthew J. Sugden  
Vice President, Compliance



