



February 9, 2021

Sent via email to pubcom@finra.org

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/Lessons from the COVID-19 Pandemic
Comments from GWFS Equities, Inc. (CRD 13109)

Dear Ms. Piorko Mitchell:

On December 16, 2020, FINRA requested comments with respect to lessons learned from stakeholders' experiences during the ongoing COVID-19 pandemic.

GWFS Equities, Inc. ("GWFS") offers the following comments in response to each of the topics addressed in Regulatory Notice 20-42, including any need for FINRA's consideration to amend its rules, operations or administrative processes to address anticipated long-term impacts of the pandemic on member firms and investors.

As background, GWFS ("the Firm") is the broker dealer member firm for Empower Retirement® ("Empower"), with over 3000 active registered persons. Empower is the second-largest retirement services provider in the United States. Empower's primary business involves the offer of retirement products and services to defined contribution plans distributed primarily, although not exclusively, through third party intermediaries, and directly in the IRA marketplace. GWFS is also an introducing broker dealer for self-directed brokerage accounts cleared through a third-party broker dealer. These accounts are established and serviced through registered representatives associated with one of several customer call centers. In this respect, the Firm's business model is generally different from a typical "retail" distribution broker dealer.

Business Continuity Planning

From the beginning of the pandemic, and subsequently thereafter, GWFS was able to promptly and successfully implement its long-standing business continuity procedures, without any negative impact to its customers, associates or other stakeholders.

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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?*

The Firm's existing Business Continuity Plan ("BCP") was written to specifically address the 10-point elements of a BCP already laid out in the Rule. GWFS did not encounter additional circumstances not already covered by the Rule, nor any challenges complying with the rule.

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

No. Despite the need to quickly adapt from its normal, pre-pandemic business operations to an enterprise-wide remote/virtual working environment, GWFS was able to follow its BCP, which was based on the existing guidelines of FINRA 4370, in a relatively seamless manner. Therefore, we do not see a need for suggested amendments to the existing Rule.

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

Yes. The Firm's written BCP specifically addressed required responses to pandemic-type public health scenarios, prior to the COVID-19 outbreak in early 2020. The Firm has action plans in place that may be activated at various levels congruent to the threat of a given pandemic or other public health-related emergency or business disruption.

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

No. We have not been made aware of any negative impact to the Firm's clients or other stakeholders that would result in the need for any enhancements to the GWFS BCP at this time.

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?*

Yes. The BCP for GWFS and Empower are tested regularly and extensively each year, including at least one full-scale, integrated disaster simulation intended to validate the recovery of mission-critical systems and business processes. The firm conducts additional types of tests throughout the year, which may include call tree/notification exercises, alternate work center and "work from home" testing, tabletop exercises, and component level testing.

Remote Offices, Alternative Work Arrangements and Remote Inspections

In line with the Firm's business model as described above and increasing technologies that permit working virtually from a personal residence, there had already been an increasing number of associates successfully working from a remote location prior to the pandemic outbreak. This had a very positive economic impact to Empower by reducing the size of office space needed and enabled management to recruit and retain qualified staff that needed more flexible work arrangements, including the ability to work from a geographic location different from the Firm's headquarters or other OSJ/branch office "brick and mortar" locations.

For that reason, GWFS was able to seamlessly expand its pre-existing alternative work-from-home arrangements, as well as operational and supervisory practices that had previously proven to be conducive to conducting business from remote locations.

Continued efforts by regulators and firms to support and encourage “work-from-home” arrangements on a permanent basis will enable the industry to be better prepared for similar emergency situations that may arise in the future. Firms are now more fully prepared to expeditiously execute business continuity plans and operate in a “business as usual” environment from remote, alternative location(s), with minimal or no disruptions to investor experiences or fulfillment of regulatory responsibilities.

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

GWFS believes that the resources and guidance provided by FINRA following the outbreak of the pandemic, including but not limited to the extension of temporary exemptive relief to certain registration qualification, inspection and other regulatory obligations, were appropriate and greatly appreciated. GWFS encourages FINRA to modify its rules to permanently adopt many of the temporary relief and other alternative regulatory obligation arrangements addressed in FINRA’s member communications (e.g., remote inspection conduct; online qualification examinations; digital signature on Form U-4)

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?

Yes. As previously stated, the Firm had already experienced an increasing number of associates successfully working from a remote location prior to the pandemic outbreak, and with material benefits for both the Firm and its associates. Considering this trend and the success of the Firm’s continued business operations experienced during the pandemic, it’s estimated that a significant number of the Firm’s associated persons will continue to work from remote office locations on a ‘post pandemic’ basis.

GWFS has not identified any ambiguities with FINRA rules that would interfere with a broader use of remote offices and has adopted expanding technologies and supervisory procedures intended to minimize any resulting challenges and risks. However, some conflicts currently exist with certain existing *state regulations* regarding branch office registration and inspection requirements that are more onerous than FINRA’s. Despite any economic impact resulting from the requirement to conduct additional or more frequent on-site inspections, it would not prevent GWFS from transitioning to a broader use of remote offices in those states. Nonetheless, GWFS believes that having a uniform definition of a branch office (requiring registration as such) and inspection frequency criteria between FINRA and all states, including but not limited to the ability to conduct virtual inspections of remote office locations where required, would be very beneficial to reasonably ensure compliance with related requirements from all regulatory jurisdictions.

FINRA may also want to consider changing the associate’s *office address that is published on BrokerCheck* if that address is the registrant’s personal residence. GWFS has received feedback from many of its associates that they feel uncomfortable having their personal residence address publicly accessible. GWFS would like to suggest that, if a location is marked as a personal residence on the Form BR, either the Firm’s main office or other supervising office suite address be published on BrokerCheck rather than a personal residence address.

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

Yes. Due to this shift to working from remote, an increasing number of personal residences have been required to be registered as a supervisory branch office or OSJ, pursuant to the current definitions under Rule 3110(f).

Registration of new *supervisory branch offices* is expected to further increase at our Firm as registered principals responsible for supervising one or more registered representatives working from remote, non-branch office locations are approved for a permanent 'work-from-home' arrangement, now or post-pandemic.

Registration of additional personal residences as an *OSJ* is currently necessary if the registered associate performs duties that involve one of the functions currently listed under that rule. e.g., supervision of one or more branch offices, even when the branch office(s) under supervision is a personal residence(s); order execution; final acceptance (approval) of new accounts; review and endorsement of customer orders; final approval of retail communications, etc.

At GWFS, the referenced functions that are applicable to the Firm's business are currently performed on technology systems which can be accessed and supervised by authorized personnel from any location that has appropriate network connectivity and security, and are not relevant to the location where the person performing the function is working. With perhaps the exception of some smaller firms, most firms would have similar advanced technology capabilities for periodic review and monitoring of these functions, as appropriate, without the need for remote locations (i.e., personal residences) to be designated as an OSJ or supervisory branch office that require annual "on site" inspection.

We recommend FINRA consider amendments to the definition of OSJ by removing one or more of the listed functions entirely and concurrently amending (or adding supplemental material to) supervision requirements under Rule 3110 that would require periodic review/testing and conducted by independent reviewers, using a risk-based assessment approach. This change would shift the focus away from the need for either an on-site or virtual inspection of the "office" from which the associate performs the function to a review of the "function" and its supervision. This proposed change is further validated when considering that official books and records documenting the performance and supervision of these listed functions are not physically maintained at the office, but rather through the Firm's centralized, electronic storage systems.

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?

Due to the temporary closure of offices and related travel restrictions, most 2020 inspections were conducted remotely. Overall, in consideration of the Firm's business model, communication technologies, and recordkeeping systems, we believe that conducting remote inspections works very well for most of the Firm's office locations. Branch office records reviewed during an inspection were already being maintained electronically on centralized, cloud-based servers. A very small number of hardcopy records maintained by branch personnel for time periods that preceded the pandemic period could not be retrieved for inspection due to office closures. Subsequently, any branch records that may have previously been maintained in hardcopy form only are now also stored in centralized, electronic cloud-based storage systems.

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

Prior to the pandemic, the Firm's normal practice was to request and review electronic books and records associated with that office location that are stored in centralized, cloud-based servers, prior to the actual on-site visit. Internal and social media searches were also conducted in advance of the on-site inspection.

Therefore, most pre-inspection work and file review was not affected with the temporary closures and moves to remote locations. To facilitate more personal interactions, as well as to observe individuals' work location set-ups, equipment, etc., all inspection discussions and interviews were conducted via video conference technologies.

GWFS strongly supports amendments to FINRA Rule 3110(c) that would allow remote inspection conduct for non-registered locations, as well as personal residences that are currently required to be designated as an OSJ or branch office, on a permanent basis, in accordance with certain reasonable, *risk-based* criteria established by FINRA and/or member firms. This recommendation is offered primarily on the basis that GWFS and most other member firms were able to successfully complete remote inspections during 2020 and 2021 to date within all examination protocols required pursuant to FINRA Rule 3110 and published guidance regarding inspection conduct.

GWFS further supports that Rule 3110(c) be amended to allow firms more flexibility with the frequency of inspection conduct based on a reasonable assessment of the overall risk level of the functions and activities performed at each location (e.g., retail vs. call center or back office operations vs. supervision), as well as the existence or absence of any "red flag" indicators associated with an office location and/or the registered person(s) working from the location. Lastly, as noted previously, relevant branch office books and records are maintained in centralized, electronic systems that are readily accessible to the inspection team without the need to review them on-site.

The economic benefit to member firms with eliminating the need for extensive travel and lodging costs associated with "in person" inspections, even with consideration of the cost of investing in any needed enhanced technologies to conduct virtual inspections effectively, is substantially material and outweighs the low risk of not conducting an inspection from the actual office location premises. This is particularly the case for large firms that have a high volume of registered persons who have a permanent "work-from-home" arrangement, such as Empower/GWFS.

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?

The Firm continued to administer its pre-existing, robust supervisory recorded call monitoring program for associated persons assigned to one of the Firm's customer call centers, including those working from a remote location. Empower expanded its use of video conferencing technologies for associates in customer facing roles outside of a call center. Supervisors were able to participate in and observe communications with prospective and existing customers by representatives under supervision on a more frequent basis than occurred on a pre-pandemic basis, since travel to plan sponsor or third-party intermediary office locations was not needed.

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

No.

Engaging with FINRA and FINRA Processes

13.-16. GWFS considers FINRA's existing rule application, administrative processes and operations to be generally effective and efficient for FINRA to engage with firms and vice versa. In specific response to

Question #15, GWFS supports FINRA’s consideration of further expanding its use of standardized requests for data routinely requested from firms as part of FINRA’s examinations, in order to make examinations more efficient and to reduce uncertainty to firms.

Qualification Examinations

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

Candidates experienced a great amount of difficulty scheduling and taking qualification exams initially during the pandemic due to test center closures. The availability of testing times was very limited due to a backlog of people attempting to take exams and limited capacity at test centers.

It was very helpful for FINRA to extend testing windows for candidates until such time as there wasn’t as big of a backlog. After the remote proctored exams were introduced, there were some technical difficulties that many candidates experienced, including not having the appropriate software capabilities, company firewall restrictions, or a moveable camera. Some candidates were unable to load the software and “timed out”, which was subsequently reflected as a “No Show” for the exam. The biggest issue candidates experienced with online was being unable to find technical support from the test vendor when they experienced issues. Candidates reported only having an instant messaging option that was giving automated answers that were not addressing their technical issues.

After the all the initial delays and technical problems, most candidates were able to successfully take online exams and some preferred that option to a testing center.

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

Yes. Unless FINRA were to identify systemic, insufficient proctor monitoring controls that compromise the integrity of examination results, GWFS supports the continuation of its online qualification exam delivery on a permanent basis. Many candidates preferred the flexibility and convenience of taking online exams. In certain geographic areas, a candidate would have had to travel a significant distance to the next closest test center if they were not able to find a convenient time to take an exam at the closest test center in their area. Online exams help to alleviate this issue.

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?

The extension of the examination period to function as principals or operations professionals prior to passing the appropriate qualification examination was very helpful, particularly given the delays in the ability to take exams. The Firm has not been made aware of any challenges as a result of the extension of the examination period and supports returning to the previous timeline expectation for attaining the required examination qualification if online examinations continue to be widely available.

Investors' Experiences

20.-24. As stated earlier, GWFS was able to swiftly implement its business continuity plan and continue its business operations as usual, with minimal impact to customers. No material changes to the Firm's business model were necessary. We believe this was attributable, in great part, to the fact that the organization already had a significant number of associated persons in customer service and operations roles working from their personal residence under an approved "work from home" arrangement. With very limited exception, neither retirement plan participants nor individual account owners experienced any difficulty accessing their funds during the pandemic.

There were some concerns related to requirements for signature notarization during the pandemic. IRS requirements were not significantly relaxed on this aspect, so pivoting to a digital or alternative offering proved challenging for some retirement customers. The most frequent request for change related to existing requirements to "print and send" certain notarized forms needed to effectuate a distribution or other course of action.

The pandemic has shown that consumers and businesses can successfully conduct transactions through computers, smart phones and other digital platforms. We expect the post-pandemic world will continue this trend, especially with respect to e-delivery and e-signatures. However, the financial services industry rules and regulations need updating to better streamline these transactions.

Overall, we encourage FINRA to promote balanced and common-sense rulemaking that allows for multi-platform electronic transactions. Because FINRA regulates securities transactions, it should encourage the Securities and Exchange Commission (SEC) to update its guidance around electronic delivery. The SEC's guidance is now more than two decades old, does not currently reflect the broad digitization of today's financial transactions, and is not in line with current e-delivery guidance from other regulators including the Department of Labor and Treasury/IRS.¹

FINRA should also continue its efforts to coordinate with other financial regulators. At any point in time, Empower's clients are subject to a labyrinth of federal (SEC; Department of Labor; Treasury/IRS) and state regulations (state insurance departments; state securities departments). Because FINRA is a self-regulatory organization of broker-dealer members, it is in a unique position to help harmonize these federal and state rules for clients. This harmonization will not only benefit FINRA's members but will significantly benefit consumers through simpler and potentially less expensive transactions.

General Effectiveness, Challenges and Economic Impact

25. – 27. GWFS' comments with regard to the general effectiveness, any challenges or impacts to the Firm and/or its customers, as well as the economic impact of the rules that are subject of Regulatory Notice 20-42 have been previously stated in the Firm's responses to each relevant topic above.

¹ Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)] ("96 Guidance"); *see also* Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] ("2000 Guidance"); and Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] ("95 Guidance").

Summary

GWFS appreciates the opportunity to share its investor and business operations experiences during the pandemic period, as well as its appeal to FINRA to consider amending certain rules and/or administrative processes relevant to the topics addressed in Regulatory Notice 20-42.

The flexibility extended by FINRA in the weeks following the start of the pandemic helped to foster an efficient and effective implementation of member firms' business continuity plans. As stated earlier, continued efforts by regulators and firms to support and encourage "work-from-home" arrangements on a permanent basis, where appropriate to do so, will enable the industry to be better prepared for similar emergency situations that may arise in the future. Firms are now more fully prepared to expeditiously execute business continuity plans and operate in a "business as usual" environment from remote, alternative location(s), with minimal or no disruptions to investor experiences or fulfillment of regulatory responsibilities.

GWFS strongly believes that the pandemic period has proven that virtually all tasks of a financial services firm can be performed remotely and efficiently, with very minimal impact to investors. This is primarily due to the advancement of enterprise-wide system technologies that, in turn, can also be used to effectively monitor and supervise the activities of the associated persons performing these tasks.

GWFS further believes that FINRA rules should be amended to permanently allow for:

- changes in the definition of OSJ and supervisory branch office that would shift the focus from the "office" where certain functions are performed to the need to periodically review the "functions" performed and supervision of those functions (using risk-based criteria and based on the member's business model);
- *remote inspections and supervisory visits* (using risk-based criteria and based on technology capabilities available to each firm);
- changes that allow for electronic administrative signatures (e.g., Form U4);
- expansion of virtual FINRA examination conduct; and
- other enhancements to FINRA rules and processes that would continue to foster investor protection, while allowing for more cost effective and efficient procedures intended to reasonably comply with governing rules and regulations.

Should you have questions or need explanatory information regarding the Firm's comments, please do not hesitate to contact me at 303-737-1742 or by email at ken.schindler@empower-retirement.com.

Sincerely,



Kenneth I. Schindler
Chief Compliance Officer
GWFS Equities, Inc.