



February 16, 2021

Submitted electronically through pubcom@finra.org

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

Re: **Retrospective Rule Review: Lessons From the COVID-19 Pandemic, Regulatory Notice 20-42**

Dear Ms. Mitchell:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority (“FINRA”) on its Retrospective Rule Review: Lessons from the COVID-19 Pandemic, Regulatory Notice 20-42, published December 16, 2020 (the “Notice”).²

I. Introduction

Fidelity has long advocated to the SEC and FINRA that rapid changes in technology and the way that business is conducted today, which is increasingly digital, largely dispersed, and no longer tethered to the traditional brick and mortar offices and file cabinets of the past, require reconsideration of FINRA rules that rely on physical presences and on-site inspections to effectively supervise, oversee, and inspect a brokerage firm’s registered populations.³ As the Notice recognizes, the COVID-19 pandemic resulted in an unprecedented and virtually overnight move to a nearly all-remote working environment for financial firms. Through advances in technology and digital tools, brokerage firms were able to serve as a source of stability to their customers during an uncertain time, largely without interruption or degradation in service.

Great challenges can create great opportunity and we applaud FINRA for seeking feedback from stakeholders on whether lessons learned from the pandemic warrant changes to FINRA rules. We believe the time is right for FINRA to revise its rules to recognize that technological advances have redefined the office of today and, by extension, the rules that govern supervision and inspection of these offices should also evolve.

¹ Fidelity is one of the world’s largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, National Financial Services LLC, and Fidelity Distributors Company LLC.

² See Regulatory Notice 20-42, available at <https://www.finra.org/rules-guidance/notices/20-42>.

³ See <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019-7488701-221389.pdf> and https://www.finra.org/sites/default/files/notice_comment_file_ref/17-38_fidelity_comment.pdf.



Below we offer the following observations from the pandemic and suggestions for changes to existing FINRA rules where applicable:

- As the brokerage business has evolved over time, both customers and employees have become accustomed to interacting electronically over secure networks;
- Even prior to the pandemic, technology allowed for employees to work beyond the traditional office locations;
- The pandemic has forced many employees to work from home (or other locations outside of the traditional office), but this has not materially impacted the ability for customers to conduct brokerage business;
- The pandemic has also forced firms to conduct testing, supervision and inspection electronically and using virtual methods. Our experience has shown no change in our quality of oversight as compared to prior in-person experiences;
- We expect many of these changes, such as customer adoption of electronic interaction and employee desire for location flexibility, to continue post-pandemic;
- We therefore recommend that FINRA update its rules regarding the definition of office locations (Rule 3110(f)) and supervision requirements (Rule 3110(c)) to account for the advances technology and industry changes;
- We also recommend that FINRA allow remote test-taking to become a permanent option and be expanded for all FINRA qualification exams, which would enable broker-dealers to more quickly hire and register associates, and allow for greater geographic diversification of employees;
- As part of its retrospective review, we also encourage FINRA to review its rules requiring “in writing” delivery of regulatory documents, including confirmations and account statements, to reflect how customers engage with firms and their preference for receiving documents electronically.

II. Responses to Request for Comment

Please find our responses to each section of the Notice below:

A. Business Continuity Plans

In response to COVID-19 and State Executive Orders requiring shelter-in-place, and with the protection of our customers and employees being of paramount importance, Fidelity suspended employee travel to branch office and other locations beginning in March 2020, and closed its branch offices for in-person visits while developing solutions to service customer needs (such as installing drop-boxes for checks and paper applications). Fidelity also significantly limited the number of on-site employees at its back-office processing and other locations.

As the pandemic developed quickly last spring, and Fidelity shifted nearly all of its workforce to a work-from-home situation over the course of just a few weeks, Fidelity’s Business Continuity Plan (“BCP”) provided a positive contribution to our response. Fidelity has a BCP as required by FINRA Rule 4370, which is regularly tested and refreshed, and Fidelity has designed its BCP to go well beyond the rule’s requirements. Additionally, even prior to the pandemic, Fidelity provided certain employees with flexibility to work remotely.

Since last Spring, most of Fidelity's workforce has been working from home (or other non-Fidelity locations), and we have seen no material impact to our customers' ability to do business with Fidelity or the marketplaces we serve as a result of these work arrangements. As with many other businesses, our branch offices were impacted by the physical restrictions relating to visiting our branch offices during the pandemic; however we made every effort to accommodate customers whose normal practice was to visit a branch were by allowing them to continue to utilize drop-boxes for physical delivery and continuing to contact branch employees with whom they might have existing relationships. Notably, Fidelity has observed no noticeable difference in the quality of supervision, oversight, and inspections of its registered personnel. In spite of the pandemic, we do not expect to change our BCP, although we may see longer-term shifts in business practices as employees may remain working from home and customers are likely to continue to transact with Fidelity in a more digital manner than before.

B. Remote Offices, Alternative Work Arrangements and Remote Inspections

In its July 2020 letter to the SEC in reference to their Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110⁴, Fidelity argued for the office definitions and inspection requirements of Rule 3110 to be modernized to recognize that business today is no longer conducted at physical locations. FINRA rules need to recognize the significant role that technology plays in the brokerage business and the fact that it is possible for broker-dealer employees to be located anywhere, as virtually all business is transacted, supervised, reviewed, stored and approved through a brokerage firm's computer systems.

Specifically, FINRA Rule 3110(f) defines various types of offices, and Rule 3110(c) provides corresponding supervisory oversight requirements for each of those offices. The definitions and requirements of these rules are premised on an outdated view of the way in which broker-dealer transactions are processed and employees are supervised. Broker-dealers no longer deal in paper trade tickets and filing cabinets full of marketing materials; rather, trades are entered electronically, and documents are reviewed and stored online. Even documents that are sent in from customers in paper format (such as some account applications) are scanned into the broker-dealer's system for electronic routing, review, and processing. Since a broker-dealer's business is done electronically, its employees are able to work at any location where electronic access is available, as the COVID-19 pandemic has demonstrated.

We strongly recommend that FINRA update the definitions and requirements of Rule 3110(f) and 3110(c). Most of the activities enumerated in rule 3110(f) are now done by phone or on an employee's computer securely connected to its firm's network, and that employee can be working in a corporate location, a home location, a family member's location, or nearly anywhere. FINRA should therefore revise or eliminate the various definitions under 3110(f), and the corresponding supervisory oversight requirements under 3110(c), to reflect a risk-based, and not location-based, approach⁵. We also recommend that requirements for physical on-site inspections be removed, as everything that is done during an on-site inspection can be done either electronically through a firm's systems or virtually through the use of widely available video-conferencing technology and broker-dealer systems.

Modernizing these rules would allow broker-dealers to continue to ensure robust supervision, investor protection, and market integrity while recognizing the technological evolution of the securities

⁴ <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019-7488701-221389.pdf>

⁵ In the event that FINRA does not provide a wholesale review of its definitions, at a minimum we recommend recognizing that individuals may conduct their work at more than just their "primary residence" as required under Rule 3110(f)(2)(A)(ii).

industry that can be effectively leveraged to allow more flexibility in where and how employees work⁶. In accordance with the existing regulatory construct, Fidelity (which has a large number of broker-dealer affiliated and non-affiliated employees) has allowed flexibility in our work force for some time, and believes that employees who work outside a typical office location can be just as effective as those in the office. In addition, the relief granted due to the pandemic regarding on-site inspections for broker-dealer offices has allowed us to demonstrate that on-site inspections of associate work locations is not required for effective supervision.

Fidelity's Experience with Remote Supervision and Inspections

As always, our supervisory controls are designed first and foremost for the protection of our customers and the integrity of the financial markets. Our experience has shown that advancements in technology, including that information is stored and accessed electronically through secure electronic systems, allows us to effectively supervise employee and customer activities leveraging technology, both during this current environment and during standard, non-pandemic times.⁷ Our findings demonstrate that in-person inspections, like those we conducted in 2019, yield no noticeable difference from remote inspections that we conducted in 2020.

With today's technology, firms can, and do, robustly supervise and oversee associated persons through the use of firm-authorized electronic systems and platforms. As opposed to in-person supervision, technology-assisted supervision is not dependent on where an employee is physically located – activities including trading and communications with customers occur through firm-authorized and rigorously designed electronic systems and platforms. These systems and platforms are subject to ongoing supervisory and surveillance reviews, and provide supervisors the ability to monitor live customer interactions and conduct real-time reviews of securities transactions, money movement, electronic correspondence, customer survey responses, etc. Hardcopy records are no longer commonplace and, even for those interactions that may involve hardcopy records, the books and records of the transaction, activity or communication are maintained primarily through electronic systems.

With respect to inspections required pursuant to FINRA 3110(c), Fidelity uses technology to conduct the following reviews effectively and efficiently:

- Safeguarding of customer funds and securities
- Maintaining books and records
- Supervision of supervisory personnel
- Transmittal of funds or securities
- Change of address

⁶ Indeed, even before the advent of COVID-19, there has been a recognition of the need to have more flexibility in work arrangements, including remote working locations, in order to attract and retain a diverse and flexible workforce, in particular for associated persons working in phone centers.

⁷ Fidelity, like other member firms, has been constantly and consistently utilizing advances in technology to enhance its oversight and supervisory controls. As described below, there is often very little, if anything, to physically review when conducting on-site inspections of offices. With respect to employees working from home or other non-branch locations, the presence of filing cabinets containing required hardcopy records is no longer commonplace and business activities are generally conducted, and books and records are maintained, exclusively through a firm's electronic systems, which are subject to ongoing supervisory and surveillance review.

- Review of customer communications
- Supervision of personal conduct (e.g. Outside Business Activities, Private Securities Transactions)

Importantly, these reviews can be conducted at any time, with or without notice, and from any location where the broker-dealer's electronic systems and platforms can be securely accessed.

Despite being able to robustly supervise and inspect branch locations using available technology, FINRA and SEC rules to date have continued to require broker-dealers to perform on-site inspections of branches. Since Fidelity conducts robust supervision using centralized technology, we believe existing FINRA and SEC rules requiring the on-site inspections of registered branch offices are of limited value to identify issues that could equally have been identified remotely through technology such as Zoom, WebEx, FaceTime and other video conference tools.

Branch Office Inspections

The physical on-site inspection of a registered branch office typically consists of the review of the following items:

- The lobby
- The back-office, including, for example, the safe contents, checks and stock certificates held for less than 24 hours, sales literature and daily operations logs containing account applications
- Branch signage
- Physical security

On-site branch office inspections are spent primarily discussing with the branch office manager items that have already been identified through technology-assisted reviews, which could be conducted equally well through video conferencing. Similarly, technology-assisted processes are available for reviews of lobbies, signage, and to ensure that all back-offices policies and procedures are being followed appropriately.

Fidelity's experience conducting nearly 900 branch inspections during the period 2017-2019 supports the perspective that physical on-site inspections result in no noticeable difference when compared to over 300 remote inspections in 2020. Onsite inspections between 2017-2019 produced only a de minimis number of minor findings⁸. Through remote inspections in 2020—which included virtual walk arounds of work locations and video conversations with branch office managers and/or branch personnel—we were able to conduct robust reviews that produced similar findings as in our 2019 on-site inspections. As an additional benefit, we find video conferencing with the branch office manager provides the ability to have detailed, timely, and direct communication of inspection results.

Non-Branch Office Inspections

Fidelity's non-branch office locations, in particular employees' homes, have even less to review during the currently required on-site inspection. Fidelity employees' homes do not have publicly facing lobbies, signage, or back-offices to inspect. Likewise, physical items such as checks and account documents are either mailed to a centralized location, scanned electronically, or brought to an official Fidelity customer-facing office, and are not received at employees' homes. Instead, Fidelity's broker-dealer

⁸ Violations included sales literature used by a small number of associates for on-site servicing of institutional corporate clients past expiration date, checks accepted from customers that ultimately could not be processed when submitted, and miscellaneous items stored in the branch office safe.

employees utilize company-issued laptops where they communicate with customers, generate and review customer documents and materials, and conduct activities that include videoconferencing. Firm systems monitor the work being conducted and can identify when employees are remotely working. Likewise, phone center employees can connect to firm systems to service customers as seamlessly as being in a traditional brick-and-mortar call center location.

With respect to non-branch office inspections, during 2019, Fidelity visited over 300 private residences that were exempt from branch office registrations. For a great majority of employees working from home, the finding rate during this period was essentially zero⁹. In 2020, Fidelity conducted remote inspections of approximately 200 private residences. These inspections were conducted using video conference tools. The finding rate of the 2020 remote inspections was nearly identical, and the vast majority of the issues identified involved a single piece of expired sales literature. Our results in 2020 demonstrate that physical, on-site examinations provide no demonstrable difference in supervision. To the contrary, Fidelity believes that by eliminating the requirement to travel to these remote locations, it can enable supervisors to spend more time coaching and supervising associates while also ensuring the safety and well-being of all.

C. Engaging with FINRA and FINRA Processes

Fidelity would like to thank FINRA for recognizing the seriousness of the COVID-19 pandemic early in its onset and acknowledging the challenges it posed to the brokerage industry in conducting on-site inspections. FINRA quickly provided relief, issuing SR-FINRA-2020-019 in March of 2020 to allow firms additional time to conduct such on-site inspections, and then further extended the time period for completion and ultimately waiving such requirements for 2020 as the impact of the pandemic continued.

D. Qualification Exams

Fidelity also appreciates FINRA's recognition of the challenges in having representatives take in-person exams at testing centers during the pandemic. In addition to such centers at times being closed by local ordinance, even after they reopened, many Fidelity associated persons were reluctant to test in person for fear of contracting COVID-19. FINRA was a crucial partner to the industry in establishing alternative arrangements to facilitate remote test-taking at non-standard test locations. FINRA also provided relief by extending the testing windows for certain exam types.

Going forward, Fidelity strongly suggests that remote test-taking from non-standard test locations become a permanent option. This would enable broker-dealers to more quickly hire and register associates in the event of unpredicted market volatility, as occurred in 2020, and would also allow for greater geographic diversification of employees. Importantly, Fidelity requests that the limitations of the types of tests which can be taken remotely be lifted, so that all FINRA qualification exams, especially supervisory principal examinations, are widely available.

We request that FINRA coordinate such exam relief with the North American Securities Administrators Association ("NASAA"), as coordinated relief at the state level is critical for ensuring remote testing success.

⁹ Fidelity has a small number of representatives who meet with employees of institutional clients at those clients' offices. If these employees are included, the inspections produced a finding rate of less than three percent, the vast majority of which involved a single piece of sales literature (either physical paper literature or electronic sales literature that had been saved to the associate's desktop) that was past its expiration date.

E. Investor's Experiences

Investor Access to Services at Fidelity was Not Materially Impacted

As a broker-dealer, Fidelity offers a wide variety of services to investors, including securities custody and trading, investment planning guidance and advice, and cash management services. Fidelity provides customers access to these services through a wide variety of methods, including in-person at our investor centers, over the telephone, online, and through a number of mobile applications. During the pandemic, Fidelity's investor centers generally remained partially opened as essential business, though with greatly reduced capacity and with other restrictions. This allowed customers to visit an investor center for activities such as dropping off paper applications or checks for deposit.

As noted above, even prior to the pandemic, customers had largely engaged with Fidelity through electronic means. Trading in particular is an activity that is largely done via telephone, internet, or mobile applications, with a very small percentage of trade instructions given during face-to-face interactions with representatives. Therefore, trading activity was not meaningfully impacted by the fact that investors could not meet with their representatives in person.

Of course, many investors highly value the investment planning, guidance and advice that Fidelity provides through its representatives. While Fidelity offers a large number of tools for customers to receive investment guidance and advice electronically, customers appreciate the interpersonal touch, market knowledge, and experience that a representative offers. Since the investor centers have been operating at greatly reduced capacity, and many representatives have been working from home, the ability to meet face-to-face with a representative has been severely curtailed. However, through the use of videoconferencing technology, and other technology tools that allow screen-sharing, Fidelity has preserved much of the same customer experience.

For other transactional operations, such as cash management, the customer experience was largely not impacted. Even prior to the pandemic, customers have for the most part migrated to digital experiences for cash management, utilizing services such as online BillPay or scanning check deposits using the Fidelity mobile application. For customers who preferred to mail checks in for deposit, Fidelity's mail processing centers remained open, and for customers who wanted to bring checks to their local branch, Fidelity offered secure drop boxes. Other services, such as disbursements to customers via check, wire, or cash withdrawal from an ATM, were not affected.

Investor Behavior: More Interaction with Fidelity, Greatly Increased Trading

The pandemic coincided with, and in many ways likely caused, unprecedented market volatility in 2020. When the economic effects of the pandemic were first felt towards the end of February 2020, the stock market dropped rapidly and quickly entered bear territory. Beginning just one month later, market subsequently rebounded and eventually climbed to record territory. Through these times of uncertainty, customers engaged with Fidelity like never before. In Q3 of 2020, Fidelity processed 2.2 million average daily trades (including rep-assisted and online for Fidelity's Institutional Brokerage and Retail investors), up 97% from Q3 of 2019. Fidelity's retail customers doubled the number of web sessions (including Fidelity.com and mobile application log-ins) from Q3 2019 to Q3 2020, and the number of households engaged in investment planning during that same time period increased 34%. In addition, customers opened more than 5 million new accounts at Fidelity in 2020, a 60% increase from 2019. To meet this unprecedented demand and provide the level of service our customers have come to expect, Fidelity hired 7,200 full-time U.S. associates in 2020, more than 5,000 of whom were for customer-facing roles.

F. General Effectiveness, Challenges, and Economic Impact

Benefits of the Rule Changes Discussed Above

As noted above, Fidelity strongly recommends a fundamental reexamination of certain FINRA rules, particularly 3110(f) and 3110(c) regarding branch office definitions and physical on-site inspections. Fidelity believes that updating the rules as described herein would benefit firms of all sizes. It is likely that such rule revision would benefit smaller firms even more so than large firms such as Fidelity, as the infrastructure support necessary to conduct physical inspections is high and can easily be replaced with widely available video conferencing technology without sacrificing investor protections. And, for firms that do not feel comfortable supporting employees working offsite, a risk-based approach would allow them to tailor supervisory programs to best reflect the nature of their business and oversight needs.

Fidelity also strongly believes that the other changes discussed herein, such as allowing for greater flexibility of remote qualifications testing, would benefit firms of all sizes. To the extent that this also enables firms to recruit and hire a more geographically diverse workforce, it will benefit both firms and investors alike.

Additional Rule Changes for Consideration

Fidelity appreciates the fact that FINRA (as well as the SEC) has undertaken this important retrospective rule review, and we are hopeful that such a review results in meaningful revisions which more closely align with current-day workings of the brokerage industry. As such, we would encourage FINRA to also review its rules regarding document delivery “in writing,” as customers have become more comfortable, and in many cases prefer, engaging with firms electronically and would like to avoid the economic and environmental destruction caused by paper document delivery (in addition to the logistical challenges of delivering such paper documentation, as evidenced by both the significant postal service delays domestically or the inability to deliver mail internationally during the pandemic). Such rules include, but are not limited to, rules regarding confirmations and account statements (FINRA Rules 2230, 2231, and 2232), as well as several corresponding SEC rules and regulations.

Fidelity is happy to provide further information, participate in any direct outreach efforts FINRA undertakes, or respond to questions you may have about our comments. Thank you again for this opportunity.

Sincerely,



Carrie L. Chelko
Chief Compliance Officer
Fidelity Brokerage Services LLC



Richard O'Brien
Chief Compliance Officer
National Financial Services LLC
Fidelity Distributor Company LLC
Digital Brokerage Services LLC