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January 26, 2021

By Email: [pubcom@finra.org](mailto:pubcom@finra.org)

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

Dear Ms. Mitchell:

We are pleased to comment on Regulatory Notice 20-42 regarding Lessons from COVID-19 Pandemic and commend FINRA on their continued recognition that input from the industry is an important component of their ongoing assessment of the effectiveness of regulation and rulemaking efforts.

I. Background

The Foreside family of companies (“Foreside” or the “Firm”) includes seventeen affiliated broker-dealers. The Firm’s broker-dealers generally serve as the principal underwriter/distributor for unaffiliated investment advisor proprietary mutual funds or exchange traded products (“Funds”) and/or maintain FINRA registrations of employees of the fund sponsor or issuer.

On March 11, 2020, the World Health Organization confirmed that the public outbreak of COVID-19, the 2019-novel Coronavirus, was a rapidly evolving global pandemic. As such, many state agencies, businesses and firms implemented alternative workplace solutions, travel-bans and visitor restrictions, which impacted the broker-dealer community, including Foreside.

II. Comments

a. Business Continuity Program

Foreside is based in Portland, ME with regional offices (Berwyn, PA; Milwaukee, WI; Boston, MA; Columbus, OH; Londonderry, NH and Delray Beach, FL). The operations of Foreside’s distribution-related services with respect to Funds are primarily conducted in our Portland, Milwaukee, Berwyn and Columbus offices. The Firm’s BCP is designed to avoid and minimize service disruptions and to ensure ongoing compliance

with its legal and regulatory obligations. The Firm has not experienced any material issues to date, including with remote access connections, system latencies, staffing shortfalls or client servicing. The Firm implemented its BCP and transitioned to remote work arrangements for all staff at the onset of the pandemic and does not anticipate any changes to our existing program as a result of the pandemic.

While the Firm acknowledges FINRA's establishment of a COVID-19 specific resource, the Firm believes that member firms would have benefited from clearer and quicker guidance and coordinated responses from FINRA at the outset of the pandemic. Much of the focus seemed to be on the preparedness of member firms, but it was apparent that those standards should have been previously considered by FINRA and articulated to member firms prior to the outset of a pandemic. The Firm believes there was a lack of a unified regulatory front and direction at the beginning of the crisis, which left firms uncertain as to their compliance obligations or available alternative remedies for a period of time.

b. Remote Offices, Alternative Work Arrangements and Remote Inspections

As a result of the pandemic and the successful transition to work from home arrangements for many member firms, the Firm believes that FINRA should reconsider the current office designation definitions and requirements. While the Firm agrees there are activities and circumstances that require line-of-site supervision, remote office inspection, absent any red flags or heightened supervision, is a viable option and reasonable approach to supervision for low risk locations where only back office compliance, administrative tasks and non-client facing activities take place. The Firm views such locations, where representatives are engaged in non-client facing activities, as low risk activities, which can be effectively supervised remotely, and that there is little or no value in an additional onsite inspection, which otherwise results in unnecessary expense and inefficient utilization of resources.

Additionally, the pandemic has confirmed the Firm's belief that remote office inspections are a viable option. Most firms have transitioned to electronic books and records and implemented technology that allow for exception reports and effective remote supervision. Further, the Firm believes the industry as a whole, has downsized office spaces and transitioned to having only essential employees onsite, thereby increasing the number of office locations for member firms and the need for compliance resources to conduct office inspections of these locations. We believe that technology can effectively support the move to virtual inspections, which has been reflected by the 2020 shift to such virtual reviews.

The Firm strongly advocates for FINRA to allow member firms to develop a risk-based approach of conducting office inspections. Similar to developing a reasonable approach to compliance programs and written supervisory procedures, the Firm believes that the industry would benefit from some flexibility with respect to office inspections. FINRA Rule 3110(c) provides that a firm’s “review shall be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulation, and with applicable FINRA rules.” A firm should be able to determine the appropriate office visit schedule and the manner of visitation (in-person, virtual or telephonic) based on an internal risk assessment, which would include, among other factors, the number of people located in an office location, the type of activity conducted from an office location and the disciplinary history of the representatives.

The Firm believes that FINRA should provide guidance to the industry with respect to the criteria a firm should assess regarding their inspection program approach. This would afford firms the flexibility to dedicate resources based on risk as opposed to regulatory obligation. A firm’s assessment of the activities and the risk of the location would permit the firm to assess the frequency and the method (onsite, virtual or telephonic) to conduct office inspections.

c. Engaging with FINRA and FINRA Processes

Amid the pandemic, the Firm underwent a Continuing Membership Application (“CMA”), Change in Membership request, routine regulatory exams for eleven affiliated broker-dealers and a Materiality Consultation. The Firm did not experience any delayed responses, difficulties in communications or other complications communicating with FINRA with respect to these matters. The Firm believes that FINRA successfully transitioned to a work from home environment as well.

d. Qualification Examinations

The Firm believes that the introduction of remote testing provides the industry with flexibility for test taking and aligns with the expanded use of remote proctoring that is being introduced across other industries and businesses. Additionally, expanding online delivery to all qualification exams will continue to modernize the industry to stay current with the evolution of business practices.

e. Investor Experiences

The Firm does not have any customers and, therefore, the Firm does not have any feedback with respect to investor experiences.

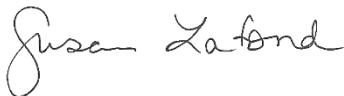
f. General Effectiveness, Challenges and Economic Impact

In light of these unprecedented events and the likelihood of similarly impactful future events, the Firm believes that the pandemic has highlighted the need to modernize the regulatory framework to provide a foundation from which to work, rather than assess these needs only on a contingency plan basis. While FINRA's rules and regulations largely provide the necessary framework for firms to develop, implement and effectively supervise firm and associated person activities, the Firm believes FINRA rules and regulations need to be brought up-to-date given the evolution of digital and electronic alternatives. This would include adoption of remote office inspections, introduction of e-signatures, continuation of remote regulatory and qualification exams and continued attention to evolving technology and digital methods as effective alternatives for reasonable compliance.

Sincerely,



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Chief Compliance Officer



Susan L. La Fond  
Chief Compliance Officer



Susan K. Moscaritolo  
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Jennifer A. Brunner  
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