



February 16, 2021

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FINRA
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Via email to: pubcom@finra.org

RE: Regulatory Notice 20-42
Request for Comments-Lessons from the Covid-19 Pandemic

Thank you for allowing us the opportunity to comment on lessons learned from the Covid-19 pandemic.

Integrated Solutions ("IS") is one of the largest providers of compliance consulting and financial accounting services to the financial services industry, including about 100 FINRA members, among others types of financial services firms.¹ We counsel clients daily on the scope of permissible broker-dealer activities under various FINRA, SEC and other rules. At any one time, we have several New Member Applications, Continuing Membership Applications and Materiality Consultations submitted to FINRA on behalf of clients. IS has regular, daily experience with FINRA and its membership categories and rules, the SEC, and other regulators with jurisdiction over the financial services industry. We counsel clients in the financial reporting and compliance requirements applicable to broker-dealers, and how they are, in fact, implemented by the various regulators.

As a service provider to the financial services industry, IS is privy to the inner workings of a myriad of broker-dealers, each with its own unique blueprint for managing its day to day operations. Each broker-dealer has had to enact plans which took into consideration the health and safety of their Associated Persons, its responsibility to its clients and counterparties, the financial repercussions on its business and complying with rules and regulations. We stepped into uncharted territory in business, mirroring the uncharted territory of Covid-19. The basic premise of both is how could we survive to the best of our ability, manage the business, maintain a fair marketplace, protect our clients and investors, and learn from this experience

There was a time when Stanley Kubrick's 2001 A Space Odyssey seemed like a science fiction fantasy never ever to be realized in our lifetime. Yet here we are in the age of artificial intelligence and remote living. The world was already on its way to the age we've just heralded in. The Covid-19 pandemic only hastened its applicability in all realms of life and in our industry. There was a

time that we thought the H1N1 virus might bring us to our knees. That was only a trial run for Covid-19.

The first premise that we learn is that broker-dealers can function effectively when their employees are not all under one roof, in one state or perhaps even one country. There is no secret in this. Connectivity and communication are the key to success, along with good management and supervision. In fact, it is quite arguable that for many broker-dealers it is actually somewhat preferable for their personnel to not be located under the same roof.

Business Continuity Planning

If we take the “Retrospective Rule Review” and break it down by the topics noted in the Regulatory Notice, the first item listed is Business Continuity Planning, which is so aptly put in the forefront of the document. Rule 4370 addresses a Firm’s response to significant business disruptions, such as a pandemic, and makes sense from a planning perspective, but is not always so significant when it comes to the nitty gritty of the situation. The Emergency Contact Information provided in the document names the individuals who are responsible for the oversight of the plan. Without having to have it spelled out, they would surely know that the safety of their employees would be primary, the relocation of their employees would be secondary and the smooth transition of the business to remote locations would be tertiary. It is convenient to have all the contact information handy in one place, but somehow instinctively, management knew what to do and how to enable it.

This last point is most important. Even though each broker-dealer’s Business Continuity Plan is unique, Rule 4370 and its enforcement by its regulatory staffers is essentially an example of one-size-fits-all. While a comprehensive plan is necessary for a major carrying broker-dealer, for many FINRA firms their smallness does not necessarily dictate how they deal with business disruptions, whether they are caused by natural disasters, such as hurricanes and blizzards or pandemics or otherwise. Somehow, most smaller broker-dealer dealers that form the bulk of FINRA’s membership deal with emergencies very well and did so well in relation to the pandemic.

Small size is not the only criterion dictating how broker-dealers deal with emergencies. A small broker-dealer that has a significant amount of clientele or counterparties that rely upon the broker-dealer, such as a firm that executes transactions in registered securities must have a plan that deals with critical emergencies and having the plan in writing is somewhat helpful. Our clients who are in that category weathered the pandemic quite well.

On the other hand, there are many FINRA members whose business has a cycle that is not moment-to-moment, such as a broker-dealer engaged in private placements where the transaction can be expressed in functions that take months or even years. These were not really affected adversely by the pandemic in an immediate manner. They were hardly affected by the pandemic in a significant immediate manner although they could not usually have actual face to

face meetings with prospects. A business continuity plan would not necessarily have been useful for those FINRA members.

For some members, a call tree is useful yet for many others they are able to successfully with blast email messages to critical or other personnel. The use of Zoom-type calls are and continue to be quite useful to manage each of the FINRA members. The BCP Disclosure Document may be the most essential of all given that this addresses the concerns of the client or investor in the case of a Pandemic or other Significant Business Disruption, providing them with alternative means of contacting the firm, its Associated Persons, and a clearing firm.

We recommend that Rule 4370 and its enforcement be pared down to only the essential facts with a requirement that a periodic review of the information and protocols should be performed regularly. Annually, but not necessarily more often, seems like an appropriate frequency for such review. Broker-dealers that are clients of ours effected their plans successfully, without much ado. The intensity of the review should be determined by each FINRA member, not by regulatory examiners who are less familiar than the people who are associated with each FINRA member.

One concern we have is that cybersecurity continues to be in place. We must continue to be vigilant in that regard especially when FINRA members use alternative plans to accomplish their goals. We should not let our guard down in that regard.

Remote Offices, Alternative Work Arrangements and Remote Inspections

Most everyone associated with our clients have worked remotely, wherever that might be as long as they had access to the internet, to their e-mail, cell phones, home phones and quotation systems. It was easy to facilitate online usage, with all supervisory systems already built into the access. With the advent of online meeting websites, there is almost no advantage to, as AT&T's motto used to be, "reach out and touch someone." This is something easily accomplished through the virtual world, virtually. Platforms such as Zoom or Microsoft Teams allow Associated/Registered Persons to meet with each other and with clients. Trading systems can be monitored remotely. Clearing Firm databases can be accessed remotely. Banking information is available remotely, Execution Management Systems are accessible remotely. If systems that exist in an office location can be replicated in an alternate location, such as a home location, then supervision can be performed remotely. Review of "snail mail" is mostly a thing of the past, this is not a great concern from a supervisory perspective and mail can be picked up or forwarded to so that for most firms it is dealt with appropriately. For many broker-dealers, especially smaller ones, paper communications are not much of an issue.

Rule 3110

The definitions of Rule 3110, which assume that business is done by all FINRA members using methods that originated in the 20th century or even before then, are a terrible anachronism of the past. The silver lining of the pandemic is that the modern methods and technology of the 21st century have proven what we have known for many years. Defining workplace in terms of physical locations is somewhat ridiculous when certain business is conducted only in an electronic mode and is supervised as a centralized function. For example, we all know that billions of shares are traded where the transactions are initiated in a customer's home on a personal computer or through the use of a cellular telephone. Once the transaction is initiated, it may very well be handled without any human interaction. Rule 3110 and its definitions of what constitutes an office needs to be completely overhauled. That's correct, FINRA should start with a blank sheet of paper and should simply shred the existing rule.

We have learned through this pandemic experience that there is flexibility in what we define as our "workplace" and that adequate supervision can be meted out remotely. We have had firms in which the OSJ is located in a residential apartment. Would this influence the member's supervisory responsibilities? No more than designating a Wall Street office as an OSJ. It is clear that even after the Pandemic is gone and life returns somewhat to normalcy that there will be more individuals working remotely and alternative working arrangements will replace many the brick and mortar offices that were the backbone of the old establishment. During the pandemic, we learned that many individuals were frustrated by the fact that they could not visit a local bricks and mortar office. FINRA must remind members to educate their customers regarding how to deliver payments for transactions so that the payments are credited promptly. We have heard anecdotally of situations where customers, especially retail customers, did not know how to contact their FINRA members to get proper advice.

Likewise, they did not know how to transmit documents, payments or instructions to a FINRA member or alternatively to a carrying firm. Too many customers are so accustomed to bricks and mortar branch offices and have difficulty adjusting to alternative contact locations. Frankly, for those situations it is difficult to expect much improvement in how FINRA members dealt with educating or servicing all of their customers. No matter how hard they try, it is unreasonable to expect perfect satisfaction with alternative measures. We should be satisfied that most customers and counterparties were able to deal with FINRA members successfully during the pandemic.

Rule 3110(f) definitions should be re-examined and redefined to allow for alternative working arrangements. Concurrent with the reconsiderations on what defines an "office" should be the requirement for "onsite" inspections. In this day and age, what can truly be gained from an onsite inspection in most cases? Granted, in firms that produce research, an inspection could confirm a physical "Chinese Wall" separation, but the information could also be gleaned from a review of the timing of research produced, trade tickets and trade blotters, which should be performed

regardless. For many firms, especially boutique ones that specialize in Investment Banking activities, onsite inspections of Branch Offices are of dubious utility or are perhaps only productive for the Inspector to have a change of venue. They offer little insight into the activity of the firm, which would more likely be captured electronically for review, then by any other means. Being “there” does not always mean “being aware” A robust inspection can be accomplished remotely, and more likely, an increase in virtual meetings would probably be more effective in establishing supervision and reinforcing applicable rules than in person inspections.

As we can all attest to, there is no lack of methods of communication in the financial services industry; cell phone, office phone, office email, Bloomberg instant message, etc. which mirrors the multiple methods of communication available to us outside of the industry. There is no question that the use of paper is somewhat obsolete, and besides the benefit in saving trees and saving the planet, the U.S. Postal Service during the pandemic has slowed to a pace where a snail would be considered speedy. That being said, the requirement to send documents in paper form with original signatures should go the way of the quill pen. The pandemic has dictated that FINRA and member firms should be able to communicate electronically, and submit documents electronically with electronic signatures, without a loss of regulatory control.

Guidance of Notice to Members 06-23

Finally, FINRA has declared what we knew all along, that there is little need for a registered FINOP to necessarily visit an office of each firm for which the FINOP has responsibility so long as the FINOP can access all of the necessary materials relating to the member. Certainly, FINRA finally recognized that remote access works.

Wet signatures as opposed to electronic signatures

We did not know this was an issue at all. We eliminated wet signatures long ago. We have relied upon legislation from over 20 years ago. Here’s an excerpt from Wikipedia.

The **Electronic Signatures in Global and National Commerce Act (ESIGN)**, [Pub.L. 106–229](#), [114 Stat. 464](#), enacted June 30, 2000, [15 U.S.C. ch. 96](#)) is a [United States federal law](#) passed by the [U.S. Congress](#) to facilitate the use of [electronic records](#) and [electronic signatures](#) in [interstate](#) and foreign commerce by ensuring the validity and legal effect of [contracts](#) entered into electronically. In 2010, both House of Congress passed a resolution at the request of industry leaders, recognizing June 30 as “National ESIGN Day.”^[1]

Although every state has at least one law pertaining to [electronic signatures](#), it is the federal law that lays out the guidelines for [interstate commerce](#). The general intent of the ESIGN Act is spelled out in the very first section (101.a), that a contract or signature “may not be denied legal effect, validity, or enforceability solely because it is in electronic form”. This simple statement provides that electronic signatures and records are just as good as their paper equivalents, and therefore subject to the same legal scrutiny of [authenticity](#) that applies to paper documents.^[2]

We didn’t wait for regulators to get with the program and have had almost no resistance whatsoever from regulators or others. We don’t think our industry requires wet signatures even if the rules suggest

otherwise. As far as we are concerned, effectively Federal law overrides SEC and FINRA rules and those of the states. We think many other people think the same way we do.

We strongly suggest that FINRA adopt a by-law indicating that wherever a FINRA rule suggests a manual signature or a wet signature, an electronic signature is acceptable so long as it conforms to the requirements and dictates of the Electronic Signatures in Global and National Commerce Act. To us this seems like a no-brainer.

Engaging with FINRA and FINRA Processes

Earlier in this letter, we spoke about the efficacy of the remote office process and how it really hardly matters any more from where securities or investment banking business is conducted. We must remind FINRA that it was accustomed for many years to assign its regulatory processes based upon the locations of the principal offices of its members. Just before the Corona virus came to infect some of us, FINRA had already converted to a new protocol where it is agnostic regarding the physical location of its personnel. Many, if not most, of our FINRA member clients are now regulated by FINRA personnel who work from offices or homes which are located far away from the clients. It used to be that as part of an examination, FINRA personnel would be forced to wear proper business attire to visit the principal member office of the member being examined. No longer is that necessarily true. Not only are members regulated remotely, but often the members of the regulatory team don't live or work in the same geographic locale.

That proves our point about remote offices, etc. Since FINRA can regulate and supervise remotely and do so with great success, so can its members operate their businesses with great success. What works for FINRA should be quite effective without the antiquated proscriptions of Rule 3110. It's time for FINRA members to finally enter the 21st century by not needing to comply with rules that don't recognize modern systems and resources..

How does our firm adopt to remote operations

We service many FINRA members. We hardly ever see them physically. In fact most of our personnel are never together in the same physical location contemporaneously. This has been the case for several years. Nowadays, we even operate internationally especially since some of our personnel cannot travel because of the pandemic. Our email and records are accessible from anyplace on our planet where there's a connection to the internet. Telephone calls to us are autoforwarded from our regular telephone numbers. When we participate in Zoom or Teams calls, we typically do not wear formal business attire. We hope our counterparties are impressed with our expertise, not our wardrobes.

Yes FINRA, remoteness works for the most part. Where it breaks down for a FINRA member is where they need to accept a document or a payment for a transaction. It is vital that FINRA members ensure that their counterparties can deal with them somehow assuming that local offices are not available. That's not a major problem.

Qualification Examinations

What has also proven to be effective during the time of pandemic has been the ability of Associated Persons to take qualifying examinations remotely. For most individuals this allows flexibility in the scheduling of the examination instead of the former requirement to be “on site” and the logistical demands in doing so. It is our belief that retaining and expanding online delivery of qualifying examinations would be beneficial to the securities industry. Allowing the simpler and more accessible method for Associated Persons to take qualifying exams will only help encourage individuals to be better trained and minimize their stress in doing so. Tangential to this matter is the extensions that have been given for Associated Persons functioning in the capacity of Principals or Operations Professionals, without having passed the appropriate qualifying examinations. It is our belief that actual experience often serves as a better teacher than book knowledge, which is almost always lost after an exam is completed. Being in an extended apprenticeship position allows as Associated Person to better understand the requirements of the position, which in actuality will help in the passing of the examination.

As industry professionals we strive to meet our regulatory obligations. We are constantly being challenged with new rules and amended rules, some which can be onerous and not necessarily equally applicable to all Broker-dealers. We also have to meet our moral and ethical obligations to our clients and to our Associated Persons. Many Broker-Dealers have been impacted adversely by the pandemic, in varying degrees. Many have had substantial business losses and have had to downsize in order to survive. Some broker-dealers are doing well and besides everyone working remotely, there has been little adverse impact on the success of their business.

Associated Persons are not only dealing with the fear of contracting Covid-19, spreading Covid-19, caring for their families while working from their homes, while they may also be concerned about the impact of the pandemic on job security. FINRA’s role in this pandemic is to understand that if its constituents don’t remain healthy, there will be a big impact on the industry and on the world and national economy. An examination of the true functionality of rules under a changing pandemic environment should be undertaken with serious consideration and with an eye for eliminating superfluous and antiquated regulations. We are at the dawn of a new world in which there are many changes and many challenges. Wall Street and the financial services industry has always demonstrated its resilience and continues to work in the interest of its clients and investors. Although we will not be hugging each other anytime soon, we can work together to better our industry as well for the individuals that fuel it.

We are happy to discuss any of our remarks with others. Please do not hesitate to contact us.

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