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Via E-mail

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

Re: FINRA Regulatory Notice 20-42 – Lessons from the COVID-19 Pandemic

Dear Ms. Mitchell:

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates, including Lincoln Financial Distributors, Inc., Lincoln Financial Advisors Corp., and Lincoln Financial Securities Corp., which are registered broker-dealers and FINRA member firms (“Lincoln”).¹ This letter is in response to FINRA’s request in Regulatory Notice 20-42 for comments on lessons learned during the COVID-19 pandemic.

Lincoln appreciates FINRA’s engagement with member firms throughout the pandemic and the meaningful actions that FINRA has taken to respond to the extraordinary challenges facing our industry. Like many other firms, at the onset of the pandemic, Lincoln shifted to a mostly remote work environment to protect the health and safety of our employees, financial professionals, and customers. Leveraging technology, Lincoln continues to operate in this way, replacing in-person interactions with video conferences and adapting our operations and compliance functions to our new virtual world. As demonstrated over the past year, firms can meet their customers’ needs, maintain operations, and satisfy their regulatory requirements in

¹ Lincoln Financial Distributors, Inc. is a wholesale broker-dealer distributor of variable and fixed insurance products. Lincoln Financial Advisors Corp. and Lincoln Financial Securities Corp. are retail broker-dealers and investment advisers.

a mostly remote setting. In fact, we think the pandemic has changed the traditional work model, in our industry and many others, permanently.

FINRA should adopt rules that align with the significant changes that have occurred during the pandemic and make permanent some of the COVID-related temporary relief it has provided to date. The focus of this letter is on remote branch office inspections, remote supervision, electronic delivery, electronic signatures, and remote qualification examinations. In addition, Lincoln supports the separate comment letters submitted by the Securities Industry and Financial Markets Association (SIFMA), the Insured Retirement Institute (IRI), the Financial Services Institute (FSI), and the Committee of Annuity Insurers (CAI).

Remote Branch Office and Office of Supervisory Jurisdiction (OSJ) Inspections

FINRA Rule 3110(c) requires member firms to conduct internal inspections that are “reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA rules.” Although Rule 3110(c) does not contain an explicit “on-site” office inspection requirement, FINRA has interpreted it as if it does based on guidance issued by the SEC and FINRA staffs in 2011.² In 2020, in light of the risks posed by the pandemic, FINRA provided temporary relief allowing firms to complete their inspection obligations under Rule 3110(c) remotely through the end of 2021, subject to certain requirements.³

During the past year, Lincoln and other firms have demonstrated that they are able to achieve the important investor protection objectives underpinning Rule 3110(c) by leveraging technology to conduct office inspections remotely. FINRA should adopt a new rule or issue new guidance permitting firms to conduct inspections remotely on a permanent basis after 2021. To address FINRA’s concerns regarding technology disparities among member firms, we suggest that this updated approach permit firms to continue to satisfy their Rule 3110(c) obligations through on-site inspections. Further, to address any concerns about branch offices that might pose heightened risk, the updated approach could permit firms that do most of their

² This guidance from the FINRA and SEC staffs, providing that “[a] broker-dealer must conduct on-site inspections of each of its office locations . . .,” is outdated and should be revisited. See FINRA Reg. Notice 11-54, Branch Office Inspections at 6 (Nov. 2011), *available at* <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>.

³ See FINRA File No. SR-FINRA-2020-019: Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision), *available at* <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-019> and FINRA File No. SR-FINRA-2020-040: Proposed Rule Change to Adopt Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) *available at* <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-040>.

inspections remotely to continue to conduct some inspections on-site using a risk-based approach.

Lincoln has approximately 1,500 office locations across the United States that are subject to Rule 3110 inspections and, in a normal year, completes 450 to 550 inspections. Like many firms, since March 2020, Lincoln has been conducting branch office inspections remotely. Utilizing technology platforms such as centralized electronic record systems and videoconferencing, these remote inspections have been highly effective.

As an initial matter, before the pandemic and over the course of the past decade, Lincoln migrated substantial amounts of office records to remotely-accessible digital formats. Thus, our inspection team was already reviewing materials electronically to improve the efficiency of our examination process pre-pandemic. In March 2020, when Lincoln transitioned to a remote work environment, our inspection team began to further leverage technology platforms and tools to achieve its objectives. For example, our inspection team can remotely access records stored on centralized systems relating to investor profiles, purchases and sales of securities, and best interest determinations, as well as blotters, marketing materials, statements and confirmations, and other records. Our inspection team can also obtain scanned copies of records remotely, use virtual private networks to access associated persons' computers to view records, and interview financial professionals and other local personnel via videoconference. In addition, Lincoln remotely monitors branch office compliance with information security policies, and the inspection team can remotely audit for compliance with information security standards such as firewalls, patching, encryption, and antivirus protocols.

Our experience during the pandemic is that remote inspections are just as effective as on-site inspections. Compared to the on-site inspections we conducted before the pandemic, the remote inspections we have conducted during the pandemic have resulted in comparable findings. We have also found that remote inspections allow us to be more agile and effective with respect to how we deploy our inspectors and supervisors to address risks.

Even if FINRA permits remote inspections to continue after 2021, we would expect to continue to conduct certain inspections on-site rather than entirely remotely where the facts and circumstances warrant. Employing a risk-based approach, it would make sense for firms to establish guidelines for determining when an on-site inspection would be required.

Supervision in a Remote Work Environment

The past year has demonstrated that most broker-dealer functions can be performed remotely by people working from home without on-site supervision. Moreover, we expect the pandemic to have a significant impact on the way firms, their employees, and financial professionals work for years to come, with many people not returning to a physical office after the pandemic has

subsidized or only doing so on a part-time basis. FINRA should revise the definitions of “branch office” and “office of supervisory jurisdiction” in Rule 3110(f) to take into account the new virtual way in which firms and their associated persons are conducting business and to avoid unnecessary registration and supervision requirements that serve no customer protection objective.

FINRA’s current definitions are based on the physical location where certain identified tasks are performed and, in the current environment, could lead to unintended classifications. For example, under the current definitions, a person’s home could potentially be deemed a “branch office” and require supervision and an on-site inspection if FINRA narrowly interprets what constitutes “customer service or back office type functions” or broadly interprets what constitutes “handling customer funds or securities” under Rule 3110(f)(2). Similarly, a person’s home could be deemed an OSJ if she is working from home and supervising another person who is also working from home. FINRA can address these issues by revising the definitions mentioned above and taking into account the role of remote supervision in the new virtual work model.

E-delivery, E-signature, and Remote Qualification Examinations

The pandemic has brought forward other opportunities where technology can be utilized to gain efficiencies while at the same time ensuring that FINRA’s important investor protection mission is achieved. One example, which would require amendments to various SEC, FINRA, and MSRB rules and guidance, would be to make electronic delivery the default method for broker-dealers to deliver required communications and disclosures to their customers. The use of electronic communications in the financial services industry delivers a client experience that is faster, more secure, and more efficient than paper documents.⁴ Investors can access electronically-delivered documents from almost anywhere and can more easily review, search, and store them.⁵ In addition, e-delivery reduces costs and would be consistent with industry trends which reflect that more investors are shifting away from paper and toward receipt of electronic documents every year.⁶ FINRA should coordinate with its fellow regulators on a harmonized approach to make e-delivery the default delivery method for broker-dealer communications and disclosures.

⁴ See SIFMA, E-Delivery: Modernizing the Regulatory Communications Framework to Meet Investor Needs for the 21st Century at 4 (Sept. 2020), available at <https://www.sifma.org/wp-content/uploads/2020/09/E-Delivery-Paper.pdf>.

⁵ See *id.*

⁶ See *id.* at 10 (“firms that SIFMA surveyed report material year-on-year increases in e-delivery adoption each year (without exception) by their clients in the last several years.”).

Other opportunities to leverage technology include expanding e-signature to Form U4 submissions permanently and expanding the types of qualification examinations that are available remotely beyond the Securities Industry Essentials (SIE), Series 6, and Series 7 exams and making them available remotely on a permanent basis.

Conclusion

Although the pandemic has presented many challenges, it has also presented opportunities to adopt technology, modernize operations, and adjust applicable rules in response to innovation. We appreciate FINRA's willingness to seek feedback from member firms on learnings from the pandemic and look forward to continuing to engage with you. We would be happy to provide additional information to you or assist in any way we can with these important issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Will H. Fuller". The signature is written in a cursive, flowing style.

Will H. Fuller

EVP, President

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