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San Diego, California 92101

January 12, 2018

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

Re: Regulatory Notice 17-38  
Request for Comments Regarding Proposed  
Changes to FINRA Rules on Inspection of  
Remote Branch Offices

Dear Ms. Mitchell:

Please allow this to serve as comments on behalf of Cetera Financial Group, Inc. ("Cetera") regarding proposed amendments to FINRA Rule 3110. The proposed changes are set forth in FINRA Regulatory Notice 17-38.

Cetera is the corporate parent of six FINRA member firms. A significant number of our branch locations have three or less registered individuals associated with them. In addition, one of our broker-dealer subsidiaries, Cetera Investment Services, LLC ("CIS") conducts business primarily through "networking" arrangements with banks and other depository institutions. Many of the bank branch locations that offer services through networking arrangements would also be affected by the changes to Rule 3110. As a result, the proposed rule changes are of considerable significance to us.

At the outset, we believe that the approach taken by FINRA in Notice 17-38 is well-advised. Technology and other changes in business models have made the process of supervision by FINRA members far different than it was even 10 years ago. Much more transaction activity and communication between customers and registered representatives is conducted through electronic means, and the supervisory models of many member firms have changed as a result. FINRA rules encourage member firms to take a "risk-based" approach, and generally allow considerable flexibility in designing supervisory systems and processes that are consistent with their size, geographic scope, business models, and product offerings. As we will discuss in more detail below, giving FINRA member firms additional flexibility in determining how to conduct inspections of certain branch locations will result in benefits to member firms in the form of cost reduction and simplification without any concomitant reduction in investor protection.

The Cetera broker-dealers serve a client base that consists almost entirely of retail investors. We have branch locations in all 50 states, many of which are in smaller communities that do not have a large number of financial advisers. A significant percentage of our branch locations house three or less registered individuals, and we have



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a number of branches that are located in the residences of registered individuals. In most of these cases, the representative either does not meet with the public at the location, does not maintain required books and records there, or both. In addition, one of our broker-dealer subsidiaries, CIS, conducts business through networking arrangements with banks and other depository institutions. Many of the branch locations for these institutions are located in communities that do not have sufficient population to warrant the full-time presence of a registered representative of a broker-dealer. Instead, many of our registered representatives work primarily from a single branch location where they maintain required books and records and meet with customers on a regular basis, but also meet with customers at other branches of the depository institution on an irregular or infrequent basis. No required books and records are maintained at these locations and they are not held out to the public as branch locations of CIS, but customers may occasionally visit the branch to meet with a registered representative or to deposit a check into their investment accounts.

The current version of Rule 3110 effectively requires FINRA member firms to conduct physical inspections at many branch locations in which little or no securities-related activity takes place. We do not believe that investor protection is enhanced through physical inspection of these facilities, and that firms could use the resources that are applied to this effort more effectively to perform other supervisory responsibilities.

As mentioned above, we are supportive of the approach that FINRA is taking in connection with the proposed revisions to Rule 3110. That being said, the proposed rule revision contains a definition of the term "qualifying office," for which physical branch inspections would not be required. We believe that this definition is too restrictive, for the following reasons:

1. Office locations in depository institutions should not be required to have physical inspections simply by virtue of the fact they are identified as branch locations of FINRA members. Most depository institutions that have networking arrangements with FINRA member firms identify all branches as offering all services provided by the financial institution. If a registered representative is only on premise once or twice per month and no records of securities-related activity are maintained at the location, we submit that a physical inspection of the branch will yield little practical benefit in advancing the supervisory oversight function. We would note that depository institutions generally have a much greater level of regulatory oversight than FINRA members. Banks and credit unions must abide by regulations established by their regulatory agencies, including the FDIC, NCUA, OCC, the Federal Reserve, Office of Thrift Supervision, and state banking regulators. Banks and credit unions that utilize networking arrangements



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in connection with securities-related activity are subject to regulations requiring adoption and compliance with policies designed to oversee and monitor investment activities on their premises. (See, for example, FDIC Rule 5000-Statements of Policy and NCUA Letter 10-FCU-03.) Investment services are typically only provided during banking office hours when a bank branch manager is present. Signage and advertising is typically required to be approved by the financial institution. Each location has a secure means of holding funds or securities overnight if they are received when mail courier services are unavailable. Bank branches also have extensive security. Requiring physical inspections of these branches is of little practical benefit to member firms or the investing public.

2. Depository institutions that are parties to networking arrangements may occasionally accept checks or other instruments for deposit into customer brokerage accounts, or to purchase mutual funds or other securities via “check and application” process through bank tellers or other personnel who are acting in a purely ministerial capacity. (Such transactions are subject to acceptance by a registered representative of the broker-dealer.) As noted above, the activities of tellers or other administrative staff as bank employees are subject to oversight that is even more stringent than that required of broker-dealers. We submit that requiring physical inspections of branch offices where only these activities take place does not yield a benefit to investors that is consistent with its cost to member firms.
3. The definition of “qualifying office” in the proposed rule specifies that no individual who conducts business in it may be subject to a statutory disqualification or have a “disciplinary history.” We believe that the provision regarding statutorily disqualified individuals makes sense and should be included as part of the rule. These individuals have generally been through an adjudicatory process that has established some type of improper conduct on their part, which is a valid reason to require that the offices that house them be subject to a physical inspection. However, the scope of events that are disclosable pursuant to FINRA Rule 4530 is incredibly wide. The vast majority of them involve one of two types of issues: Tax liens or other personal financial matters involving registered representatives, and customer complaints, which are defined very broadly in the provisions of Rule 4530. Tax liens and other personal financial issues of representatives may be a valid subject for disclosure to the public, but they should be evaluated by the firm along with all of the other factors that go into making a risk-based evaluation of the appropriate type of supervisory oversight to



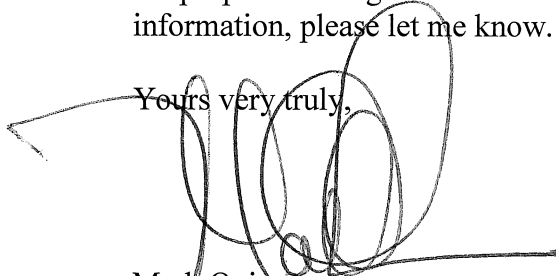
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be applied to a given branch location. Customer complaints represent a similar situation. The vast majority are resolved without further action by the firm, and we submit that many of them are without merit. Conditioning the ability to limit the need for physical branch inspections on not having any individuals with disclosable events is not warranted in these circumstances and should be eliminated.

In 2017, the Cetera broker-dealers conducted physical inspections of more than 500 branch locations that would likely meet the definition of a "qualifying office" under the proposed revisions to Rule 3110. Taking into account travel expenses and costs such as salaries and benefits for the staff members who perform these inspections, we estimate that the total cost to Cetera was in excess of \$500,000. This is obviously a substantial amount of money. We submit that this and the related resources that go into performing physical inspections at these branch locations could be used much more effectively in accomplishing supervisory oversight and promoting protection of investors.

We appreciate the opportunity to provide you with these comments, and look forward to working with FINRA on development of rules that cover the activities that are covered in the proposed changes to Rule 3110. If you have questions or we may offer any further information, please let me know.

Yours very truly,



Mark Quinn  
Director of Regulatory Affairs  
Cetera Financial Group