Wells Fargo & Company
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February 16, 2021

Via E-mail: ***pubcom@finra.org***

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

RE: Regulatory Notice 20-42: FINRA Seeks Comments on Lessons from the COVID-19 Pandemic

Dear Ms. Mitchell:

Wells Fargo & Company, together with its affiliates and subsidiaries (collectively, "Wells Fargo"), welcomes the opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) Regulatory Notice 20-42 (the "Notice"),[1] seeking comments regarding lessons learned from experiences and operations during the COVID-19 pandemic.

Wells Fargo is a diversified, community-based financial services company with $1.9 trillion in assets and approximately 259,000 employees, which provides banking, investment and mortgage products and services, as well as consumer and commercial finance. Our broker-dealer[2] and asset management affiliates comprise one of the largest retail wealth management brokerage and retirement providers in the United States, helping millions of

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[1] Regulatory Notice 20-42, FINRA Seeks Comments on Lessons from the COVID-19 Pandemic (December 2020). https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-42.pdf

[2] Wells Fargo Advisors (WFA) is the trade name for Wells Fargo Clearing Services, LLC, a dually-registered broker-dealer and investment advisor, member FINRA/SIPC and a separate non-bank affiliate of Wells Fargo & Company that administers approximately $1.6 trillion in client assets. It employs nearly 12,900 full-service financial advisors in branch offices in all 50 states and over 5,000 licensed bankers in retail bank branches across the United States.

customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals.

I. BACKGROUND

In December of 2020, FINRA issued this Notice, seeking comments on lessons learned from the COVID-19 pandemic. Throughout 2020 and into 2021, the COVID-19 pandemic has impacted all facets of society, accelerating changes in many industries, including transportation, travel and hospitality, retail and food service, and financial services. Despite these challenges, Wells Fargo was able to transition to a mostly full-time remote workforce in a timely fashion and continue to service customers effectively.

II. DISCUSSION

Wells Fargo greatly appreciates FINRA's efforts in working with member firms to provide important regulatory relief that furthered the evolving workplace and social interaction norms that have arisen during the COVID-19 pandemic. While the future course of the pandemic is uncertain, we offer to continue to actively engage and share with FINRA our experiences and viewpoints as we navigate through this new environment.

Wells Fargo believes the experience from operating during the ongoing COVID-19 pandemic, the success of the temporary regulatory relief provided, and the ability of firms to continue to meet their regulatory obligations under these circumstances has brought to light some possible changes to rules, which FINRA should consider making permanent to reflect advancements in, and utility of, technology and help member firms better service customers.

In that vein, the near fully remote workplace environment forced upon the industry by the pandemic has highlighted firms' ability to adopt procedures and controls to support remote working conditions without sacrificing investor protection. This transition underscored the fact that firms' integration of technology advancements into their workplace environments over a number of years now provides them the capability to conduct the vast majority of their business activities electronically and remotely. No matter the future course of the pandemic, we believe the fundamental changes to the way we work and interact with our clients, though accelerated due to the pandemic, are part of a larger trend towards more flexible arrangements that are unlikely to be wholly reversed.

Subsequently, based on our learnings from the new operating environment, we recommend FINRA consider certain permanent rule changes that, in our view, will not impair investor protections yet will still recognize current industry capabilities that support new ways of conducting business activities. We also hope to continue this dialog as we obtain greater clarity regarding the course of the pandemic.

a. Branch Office/Supervision

The COVID-19 pandemic forced financial services personnel to work from a variety of locations, which do not necessarily meet the current definitions of "branch office" and "office of supervisory jurisdiction," as contained in FINRA Rule 3110(f). However, these modified workplace arrangements have highlighted how firms' have integrated new technologies that support more advanced supervisory capabilities. In effect, the pandemic has demonstrated that virtually all of the tasks at a financial services firm can be done by employees working remotely without on-site supervision as long as a firm has adopted appropriate protocols to supervise such activity.

Consequently, we recommend a risk-based approach for determining the designation of work locations. A location should not be required to be registered as an OSJ or a branch office where there is no customer-facing activity or custody of customers' funds or securities, provided that there is a system in place that permits adequate supervision.[3] While historically it may have been the case that many activities required a physical presence to function or be supervised appropriately, it is no longer the case if appropriate supervisory protocols are adopted.

Furthermore, the ability of individual brokers to work remotely, while still being able to communicate with clients, conduct trading activity, and utilize their respective firms' operational organizations, has changed significantly since the definition of "branch office" was last updated in 2006. For example, the final acceptance of new accounts and final approval of retail communications are frequently done through online submissions, making the current requirement that final acceptance be restricted to an office of supervisory jurisdiction outdated.

Wells Fargo recommends that FINRA review and revise the definitions of "branch office" and "office of supervisory jurisdiction" contained in Rule 3110(f) to more accurately reflect the modern workplace. Wells Fargo would be happy to work with FINRA and other member firms to construct updated definitions to these terms as suggested above. In conjunction with updates to these definitions, Wells Fargo believes it would be useful for FINRA to issue guidance on working remotely, in the context of trading, operations, or back-office personnel where only certain functions are performed (*e.g.*, not dealing with retail customers, not holding funds/securities, or not effecting securities transactions).

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[3] *See* SIFMA Comment Letter to FINRA Regulatory Notice 20-42, Page 3.

b. Remote Office Inspections

During the COVID-19 pandemic, FINRA provided temporary relief to member firms to perform inspections under Rule 3110(c) remotely through 2021. FINRA Rule 3110(c) requires member firms to perform inspections of all locations from which associated persons regularly conduct business. Wells Fargo believes that current electronic books and records platforms and electronic supervisory systems permit firms to maintain investor protections envisioned under FINRA Rule 3110 through remote inspections of offices of supervisory jurisdiction or branch office locations.

Additionally, as key technology and systems have improved, a majority of branch inspection activities are now completed prior to the on-site visit phase of the branch inspections. In fact, prior to the onset of the pandemic, approximately 90% of the inspection process was completed remotely prior to conducting an on-site visit. Consequently, Wells Fargo recommends that FINRA issue interpretive guidance providing member firms the ability to conduct remote inspections, using a risk-based approach, as a permanent feature of the internal exam process beyond 2021, thus providing flexibility to conduct safe, timely and comprehensive inspections in the future.

c. Electronic Delivery/Signatures/Filing

FINRA Rule 1010(c) requires the use of manual (wet) signatures for use in initial and transfer Form U4s. FINRA's allowance for the use of electronic signatures during the COVID-19 pandemic for these Form U4 filings has illustrated the greater efficiency and safety electronic signatures provide in complying with regulatory requirements. Accordingly, Wells Fargo recommends that FINRA permit electronic signatures for all Form U4 and Form U5 submissions.

Similarly, electronic delivery is a less costly and more efficient way to transmit and file important documents while avoiding any disruption of the U.S. Postal Service or international mail which may occur. Furthermore, Wells Fargo fully supports the expansion of the electronic delivery rules, and requests that FINRA permit electronic delivery for all filing and document delivery requirements under Forms U4 and U5.

As a broader matter, the COVID-19 pandemic has further demonstrated the effectiveness of communications technologies that are delivering a client experience that is faster and better, whether opening and managing accounts or facilitating meetings between clients and financial advisors. These developments highlight the need for major changes to our existing delivery framework for investor communications. Consequently, due to these changes in the financial services industry and society at large over the last several years, where day-to-day business is now conducted almost completely electronically in many cases, Wells Fargo asks that FINRA work with the SEC to modernize SEC rules and related guidance to reflect this reality and establish electronic delivery as the primary means for delivering investor communications.

Finally, the use of the advancements in technologies and capabilities discussed throughout this letter above could be furthered by the updating of outdated SEC recordkeeping under SEC Rule 17a-4. Consequently, we ask FINRA to work with the SEC to modernize such recordkeeping requirements consistent with the recommendations set forth in the November 14, 2017 rulemaking petition submitted by certain securities industry associations.[4]

d. Qualification Examinations

FINRA has provided much-needed flexibility in the administration of qualification examinations during the COVID-19 pandemic by allowing individuals online and remote examination options in response to the lack of availability of testing centers due to capacity and social distancing requirements in the various jurisdictions. Online/remote testing has proven to be an efficient alternative to in-person examinations and beneficial in protecting the safety of individual testing takers and administrators during the pandemic.

Wells Fargo, based on the success of the online/remote testing activities during the pandemic, recommends that FINRA make online/remote testing a permanent option for FINRA qualification examination testing even after abatement of the pandemic.

[4] See Letter submitted by the Securities Industry and Financial Markets Association, the Financial Services Roundtable, the Futures Industry Association, International Swaps and Derivatives Association, and the Financial Services Institute.

III. CONCLUSION

Wells Fargo appreciates the opportunity to respond to FINRA's request for comments on lessons from the COVID-19 pandemic. If you would like to discuss these items further or need additional information, please contact Robert J. McCarthy, Director of Regulatory Policy at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com, or Carl Tugberk, Head of Wealth and Investment Management Public Policy for Wells Fargo & Company, at carl.tugberk@wellsfargo.com or (202) 416-2638.

Sincerely,

/s/ James T. McHale
Chief Compliance Officer
Wells Fargo Advisors