

January 12, 2018

VIA Email pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1509

Re: Commentary on FINRA Regulatory Notice 17-38

I am the Chief Compliance Officer for Lara, May & Associates LLC and this letter is our response to Regulatory Notice 17-38 and its request for comments. Our firm has been a dually registered broker/dealer and investment advisory firm since 1981. The regulations and demands of this industry have changed drastically since then. As a Chief Compliance Officer we need to be creative in the way we utilize resources and strive for the balance of effective and efficient. Good firms want to make good hires of individuals with strong ethics and avoid hiring poor candidates. To put it simply, we are trying to keep good people from doing stupid things.

In the Regulatory Notice 17-38 the sections "Need for the Rule" and "Economic Baseline" are spot on. Technology has now provided us with publically available tools that can be incorporated into a supervisory system such as: Google Earth (for location checks), Google Alerts (for individual web presence monitoring), public court records searches, real estate ownership records, etc. Likewise with Virtual Desktop Interface (VDI), cloud storage and remote access, many office operations and functions can be decentralized and are not limited to a physical location. Thus, the "branch office" of yesterday is much different today, therefore the inspection demands and methodology should be updated and advanced to meet these changes.

To be clear, the word "on-site" currently isn't written in Rule 3110 or a supplement regarding inspections. So Supplement 3110.15 would be adding to the Rule. It is in FINRA's Reg. Notice 11-54 that spells out the expectation of on-site inspections but did not go through the rulemaking process.

The distinction between "on-site" and "remote" implies that an on-site presence of an inspector is superior and more effective than a remotely based, interactive inspection. An inspection conducted on-site or remotely is only as good as the inspector's skill and efforts. An uneducated and ill prepared inspector on-site would undoubtedly be less effective than an educated, trained inspector performing a remote inspection. Using a remote method the inspector's sense of smell and touch is removed, but not the most critical sense of all - your gut feeling. If something doesn't seem right, that's an escalation trigger. Focus should be on the inspection results not the vehicle for the inspection. In short, did the inspection achieve its intended purpose? Our firm has had great success in using FaceTime and other technology when conducting remote inspections. Have the individuals revising this rule actually conducted a mock FaceTime inspection?

Our Responses to the Request for Comment

1. We currently have on-site visitation requirements for branch offices. Our use of FaceTime inspections with reps working from their homes was commented on by FINRA examiners. The use of a remote inspection methodology for our non-registered branches and OSJ branch office for one year would save us approximately \$3,500 and 8 days of time out of the office, not to mention the loss of productivity due to excessive traveling.
2. A firm with a disciplinary history of material supervisory violations or other investment violations could use an independent inspector or require additional training.
3. Criteria for a "qualifying office":
 - a. Branch office structures can vary vastly between firms, as evident by fellow commenters. Technology and business practices will continue to evolve as well and so should inspection processes.

If FINRA wishes to require an on-site methodology for office inspections I recommend revising the proposed Supplement Rule 3110.15 to define what does require an on-site inspection, rather than set criteria for what doesn't, as that definition is far more identifiable. So that the term "qualifying office" is reversed by defining branch offices that require an on-site inspection;

- i. an OSJ held out to the public with more than 10 associated persons that conduct business for the firm who are designated to the location; or
 - ii. a branch office that accounts for more than 49% of the volume of business.
 - b. This is something the firm should be able to decide. However, by rewording the questions, I recommend that if a firm conducts an on-site inspection of a required branch and there are no material changes to that office or operations, with the firm's justification documented, the firm should be allowed to have the option of conducting the following inspection remotely. This would save unnecessary travel costs and time out of the office. As an example, I talk with the manager of our other OSJ almost daily, she's extremely competent, and I have access to the branch records. There are only three associated persons in that branch. No material changes have been made, it's been 'business as usual'. A remote inspection for the next cycle would certainly be reasonable. A year goes by pretty quickly.
 - c. This aspect should not be a requirement of the rule. An interview with the necessary associated person(s) would be an inherent part of any inspection. The way I read this it would require interviews with all associated persons and that could place unreasonable demands on the inspector.
 - d. No, distance these days is irrelevant.
 - e. Firms should be able to review their branch office structure and truly formulate a risk based approach and reasonable system for inspections.
4. Please refer to my response above in 3.a. The current proposed "qualifying office" definition is too complex and not broad enough.
 5. Yes, again it's easier to clarify the type of office that FINRA requires be conducted on-site, instead of what is excluded.
 6. With the recommended changes herein, there should not be a negative impact on the fulfillment of our obligations.

SUMMARY

The overarching goal is to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules." There are also state and insurance regulations many firms need to address as well. If FINRA wishes to require an onsite methodology for office inspections I recommend revising the proposed Rule to define what does require an on-site inspection, rather than set criteria for what doesn't.

FINRA does a great job sharing best practices and industry situations and experiences. This area especially is where utilizing the feedback from exams and collective resources FINRA could help educate firms with best practices and help them to be more effective and efficient with their inspection programs.

Sincerely,

Jennifer Szaro