



July 28, 2020

**VIA ELECTRONIC MAIL**

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: File Number SR-FINRA-2020-019: Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision)**

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to the Securities and Exchange Commission (the “Commission” or “SEC”) in response to the Financial Industry Regulatory Authority Inc.’s (“FINRA”) request for public comment on the temporary proposed new FINRA Rule 3110 (Supervision), Supplemental Material .16 (Temporary Extension of Time to Complete Office Inspections) (the “Temporary Rule”), which was filed for immediate effectiveness on July 7, 2020, relating to the on-site inspection of FINRA member firm office locations.<sup>2</sup>

***I. Executive Summary***

SIFMA and its members appreciate the opportunity to provide comments to the Commission on the Temporary Rule. Particularly in these trying times, it is important that regulators maintain an open dialogue with industry participants and flexibility in their approach to

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> FINRA, *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision)*, File No. SR-2020-019, 85 Fed. Reg. 40713 (July 7, 2020), <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-019>.

dealing with unforeseen consequences and uncertain outcomes of the COVID-19 pandemic environment. In furtherance of that open communication, SIFMA and its members ask that the Commission take into account the following considerations in connection with the Temporary Rule.

SIFMA and its members firmly believe it will be virtually impossible to complete the 2020 on-site branch inspection cycle by the revised March 31, 2021 deadline due to the continuing and increasing operational challenges, travel restrictions, health and safety risks, and uncertainties presented by the COVID-19 pandemic. SIFMA's member firms are also at risk of delaying required planning for the 2021 inspection cycle due to the uncertainties and delays they are currently facing with the 2020 cycle.<sup>3</sup>

In recognition of these ongoing challenges, SIFMA and its members request that FINRA member firms be permitted to rely on remote branch inspection programs that leverage existing, proven processes and technology to ensure that sales practice risks, suitability risks and investor protection concerns are properly addressed, in lieu of an on-site inspection in 2020, for the duration of the COVID-19 pandemic.<sup>4</sup> On-site inspections could then resume when conditions permit and would incorporate a retrospective review during the next viable visit of any inspection elements that could not be tested remotely, which would be incorporated into that year's reporting. This form of relief would be consistent with the other actions previously taken by FINRA and the

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<sup>3</sup> Financial regulators recognize that the pandemic is likely to be a long term event requiring extended regulatory relief. For example, the head of the Federal Deposit Insurance Corporation recently stated that banks could need regulatory flexibility for months as they contend with the COVID-19 crisis and its impact on customers, cautioning that the pandemic isn't a sprint but a marathon. See Jon Hill, *FDIC Head Says Banks Facing 'Marathon' With Pandemic*, LAW360 (July 23, 2020), <https://www.law360.com/articles/1294842/fdic-head-says-banks-facing-marathon-with-pandemic>.

<sup>4</sup> SIFMA believes this requested relief might need to be extended to cover the 2021 examination cycle depending on the continued evolution of the pandemic. See generally *Shut down the country and start over to contain Covid-19, US medical experts urge political leaders*, CNN, <https://www.cnn.com/2020/07/23/health/shutdown-us-contain-coronavirus-wellness/index.html> (copy of letter at <https://uspirg.org/resources/usp/shut-it-down-start-over-do-it-right>); Hannah Denham, *Google Employees will Work from Home Until at Least Summer of 2021*, Washington Post (July 27, 2020), <https://www.washingtonpost.com/business/2020/07/27/google-remote-workers-july-2021/>; Nicholas Bogel-Burroughs and Sarah Mervosh, *U.S. Hospitalizations for the Coronavirus Near April Peak*, N.Y. TIMES (July 22, 2020), <https://www.nytimes.com/2020/07/22/us/coronavirus-hospitalizations-near-peak.html?action=click&module=Top%20Stories&pgtype=Homepage> (noting that as of July 22, 2020, COVID-19 hospitalizations neared the previous peak in April 2020 (59,628 (July 22) vs. 59,940 (April 15))); see also Alvin Powell, *Pandemic threatens to veer out of control in U.S., public health experts say*, THE H. GAZETTE (June 26, 2020), <https://news.harvard.edu/gazette/story/2020/06/pandemic-threatens-to-veer-out-of-control-in-u-s/> (stating "Harvard public health experts said the nation's COVID-19 epidemic is getting "quite out of hand" and that, with cases rising rapidly in the hardest-hit states and a two-week lag between infection and hospitalization, the situation appears set to worsen quickly."); Robinson Meyer, *The Week America Lost Control of the Pandemic*, THE ATLANTIC (July 2, 2020), <https://www.theatlantic.com/science/archive/2020/07/week-america-lost-control-pandemic/613831/> (stating "[t]he American pandemic is careening out of control."); Laurel Walmsley, *U.S. Hits 4 Million Cases Of Coronavirus — Adding A Million New Cases In Just 15 Days*, NPR.ORG (July 23, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/07/23/894688178/u-s-hits-4-million-cases-of-coronavirus-adding-a-million-new-cases-in-just-15-da>.

Commission during the COVID-19 pandemic that acknowledge the impact of health and safety concerns on firm operations and firm personnel.

## ***II. Background***

On July 7, 2020, FINRA filed with the Commission for immediate effectiveness the Temporary Rule that, in light of the operational challenges member firms are facing due to the outbreak of COVID-19, would extend the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) (Internal Inspections) to March 31, 2021.<sup>5</sup>

With continued concerns around the health and safety of firm personnel, travel restrictions and various other limitations that vary geographically (and change over time),<sup>6</sup> the COVID-19 pandemic has continued to have an acute impact on the ability of FINRA member firms to function normally, and it still is uncertain when normal operations will resume.<sup>7</sup> Even with relief granted by FINRA and the SEC, many affected industry participants are struggling to sustain efforts to comply with certain regulatory requirements that the COVID-19 pandemic environment makes impracticable, such as on-site office inspections.

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<sup>5</sup> FINRA, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision), File No. SR-2020-019, 85 Fed. Reg. 40713 (July 7, 2020), <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-019>.

<sup>6</sup> See, e.g., Advisory Board (July 14, 2020) (stating “[d]ata from the New York Times shows that Puerto Rico; the U.S. Virgin Islands; Washington, D.C.; and 38 states saw their average daily numbers of newly reported coronavirus cases rise over the past 14 days: Alabama, Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.” and “WHO director warns of ‘no return’ to normal ‘for the foreseeable future.’” and “States, localities roll back reopening plans.”) (<https://www.advisory.com/daily-briefing/2020/07/14/coronavirus>). See also N.Y. Times, *See How All 50 States Are Reopening (and Closing Again)* (July 24, 2020) (<https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>) and N.J. COVID-19 Information Hub, *Which States are on the travel advisory list?* (July 22, 2020) (stating that N.J. “has issued an incoming travel advisory that all individuals entering New Jersey from states with a significant spread of COVID-19 should quarantine for 14-days after leaving that state” and noting that as of July 21, 2020, 31 states have met this criteria.).

Under the 14-day quarantine travel advisory announced by the Governors of New Jersey, New York and Connecticut, individuals traveling to or returning to New Jersey from states with increasing rates of COVID-19 are advised to self-quarantine for 14 days. This includes travel by train, bus, car, plane and any other method of transportation.

<sup>7</sup> See, e.g., *First and Second Waves of Coronavirus*, HOPKINSMEDICINE.ORG (June 24, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus> (addressing various COVID-19 questions including the uncertain course of the pandemic, that current increases in the virus are part of the first wave, that there could be a second wave in the fall/winter of 2020, and that the second wave could be worse).

### ***III. Comments***

#### **a. The Commission and FINRA should permit FINRA member firms to implement a remote inspection program in lieu of on-site office inspections.**

In light of the considerations set forth below, SIFMA and its members propose the following, which we believe is consistent with other actions previously taken by FINRA and the Commission during the COVID-19 pandemic and properly acknowledges the significant impact of health and safety concerns on firm operations and firm personnel.

- Immediately for 2020, and going forward, the Commission and FINRA should grant temporary relief from the on-site inspection requirement of FINRA Rule 3110 due to the challenges presented by the COVID-19 pandemic.
- FINRA member firms should be permitted to rely on remote branch inspection programs that leverage existing, proven processes and technology to ensure that sales practice risks, suitability risks, and investor protection concerns are properly addressed.
- Such remote branch inspection program should serve in lieu of an on-site inspection in 2020.
- Any continuing iterations of the remote branch inspection program should serve in lieu of an on-site inspection in 2021, as it seems likely that the COVID-19 pandemic will continue into next year.

#### **b. Current status of firm operations and inspection programs.**

##### **i. Status of branch office operations.**

Since March 2020, a majority of firms have enabled branch office employees, including supervisors, registered representatives and operations staff, to work remotely. At these locations there has been little to no account processing nor any client contact. Some firms continue to operate branches with limited on-site staff. At locations where staff has been working remotely firms generally restrict staff to making short, periodic visits to their offices to process incoming mail and conduct other operational tasks that cannot be completed remotely. In addition, most firms do not have definitive plans for re-entry of on-site employees during 2020 and it is likely that staff will continue to work remotely through 2020 or beyond and will be subject to limitations on their in-office activities upon their return to the office. It is expected that the phasing in of normal firm operations will include significant limitations on daily staffing, size of meetings held

at the office, and access by visitors, among other restrictions. The timing of any return-to-office plans is of course dependent upon the progress of the COVID-19 pandemic.<sup>8</sup>

ii. Travel restrictions.

Many firms have implemented travel restrictions on both domestic and international corporate business travel due to the risks of exposing corporate travelers to COVID-19 and the risks of corporate travelers spreading the virus to others. Corporate business travel is not expected to resume until 2021, and it is still unclear when in 2021 that might be. Firms and their employees should not be placed in this Cornelian dilemma where firms are compelled to direct employees to travel during these uncertain times and employees are compelled to choose between their employment and their safety. This situation creates a health risk for the employee and an ethical concern for the firm.

Numerous state and local governmental authorities have instituted ongoing quarantine or social distancing requirements and travel restrictions that pose significant challenges to the resumption of domestic business travel.<sup>9</sup> The recent increase in virus cases and hospitalizations also has caused numerous jurisdictions to roll-back or consider rolling back their re-openings.<sup>10</sup> Several states have issued travel advisories requiring individuals to quarantine upon entering the state from jurisdictions meeting certain COVID-19 related criteria. For example, the Governors of New Jersey, New York and Connecticut have issued travel advisories that require individuals traveling to these states from states with “increasing rates of COVID-19 . . . to self-quarantine for 14 days. This includes travel by train, bus, car, plane and any other method of transportation.”<sup>11</sup>

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<sup>8</sup> Google has announced its work force will not return to the office **until at least the summer of 2021**. See Hannah Denham, Google Employees will Work from Home until at Least Summer of 2021, Washington Post (July 27, 2020), <https://www.washingtonpost.com/business/2020/07/27/google-remote-workers-july-2021/>.

<sup>9</sup> See, e.g., *N.Y., N.J., Connecticut Now Say Travelers From 31 Hot Spot States Must Quarantine*, NPR.ORG, <https://www.npr.org/sections/coronavirus-live-updates/2020/07/21/893648360/n-y-n-j-connecticut-now-say-travelers-from-31-hotspot-states-must-quarantine> (last updated July 21, 2020) (as of 7/21/2020, travelers to New York, New Jersey and Connecticut from 31 other states are required to self-quarantine for 14 days).

<sup>10</sup> See, e.g., Siobhan O’Grady, John Wagner, Hannah Denham, Felicia Sonmez, Meryl Kornfield, Reis Thebault, and Michael Brice-Saddler, *California, Oregon roll back reopenings as new coronavirus cases surge*, Washington Post (July 13, 2020), <https://www.washingtonpost.com/nation/2020/07/13/coronavirus-live-updates-us/> and Sarah Hansen and Lisette Voytko, *The Great Coronavirus Rollback: California The Latest State To Abandon Reopening Plans Amid Record Coronavirus Surge*, Forbes (June 26, 2020), <https://www.forbes.com/sites/sarahhansen/2020/06/28/the-great-coronavirus-rollback-california-the-latest-state-to-abandon-reopening-plans-amid-record-coronavirus-surge/#35f6013c5bd9>. See also California COVID-19 Information Hub (July 23, 2020) (stating “[a]ll individuals living in the State of California are currently ordered to stay home or at their place of residence”), [https://covid19.ca.gov/stay-home-except-for-essential-needs/?gclid=EAlaIqobChMImOyq0dJv6gIVQAiICR2g8g0kEAAYASAAEgJJOPD BwE#top?utm\\_source=google&utm\\_medium=cpc&utm\\_content=stayathome&utm\\_campaign=ca-covid19response&utm\\_term=california%20stay%20at%20home%20orders](https://covid19.ca.gov/stay-home-except-for-essential-needs/?gclid=EAlaIqobChMImOyq0dJv6gIVQAiICR2g8g0kEAAYASAAEgJJOPD BwE#top?utm_source=google&utm_medium=cpc&utm_content=stayathome&utm_campaign=ca-covid19response&utm_term=california%20stay%20at%20home%20orders).

<sup>11</sup> N.J. COVID-19 Information Hub, Which States are on the travel advisory list? (July 22, 2020) (noting that as of July 21, 2020, 31 states have met the self-quarantine criteria.).

Further, ongoing disruptions due to civil protests in major metropolitan cities also pose challenges to the resumption of travel plans and may affect the health and safety of firm personnel.

iii. Status of inspection programs.

Due to travel restrictions and various federal, state and local government requirements, on-site visits by firm inspection staff ceased around February or March 2020. Inspection staff are currently working remotely, as they have been since that time. In furtherance of FINRA member firms' good faith efforts to maintain robust compliance programs and comply with Commission and FINRA rules, firms have been remotely supervising using technology and have begun to determine how technology can be used to effectively conduct inspections. The design and implementation of these programs are still ongoing at many firms as necessary modifications are made to adjust to the new remote work environment. It is still uncertain when it would be appropriate or responsible to allow on-site office inspections to occur, and it is unlikely that given the truncated inspection schedule provided by the March 31, 2021 deadline that firms will be able to complete their on-site office inspections, and continued restrictions may limit their ability to adequately plan for their 2021 inspection cycle.

c. **SIFMA's request recognizes public health dangers and furthers the Commission's stated COVID-19 relief goals.**

Permitting firms to leverage technology to remotely inspect office locations follows the approach that SIFMA understands the Commission has been following for its own operations since the beginning of the pandemic:

- “The [SEC] has . . . transitioned to a **full telework posture with limited exceptions**. A majority of SEC staff began teleworking on Tuesday, March 10, and the agency has remained fully operational during this transition, which is expected to last at least until early October.”<sup>12</sup> [emphasis added]. This means that the Chairman, Commissioners, and their respective staffs, Division of Trading & Markets, Division of Corporation Finance, and Division of Investment Management are regulating the securities industry/markets from a remote work posture.

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<sup>12</sup> SEC, *SEC Coronavirus (COVID-19) Response*, <https://www.sec.gov/sec-coronavirus-covid-19-response> (last updated July 22, 2020). This means that all SEC operating Divisions, Trading & Markets, Corporate Finance, and Investment Management, are regulating the securities industry/markets from a remote posture.

- “In light of **health and safety concerns** and other circumstances, OCIE has moved to **conducting examinations off-site** through correspondence, **unless it is absolutely necessary to be on-site.**”<sup>13</sup> [emphasis added]
- The SEC’s Division of Enforcement has been conducting virtually all the core elements of its enforcement program remotely.<sup>14</sup>

Taking the approach outlined in this letter also would align with the Commission’s stated method and goals for broadly addressing the issues raised by the pandemic and, in particular, for issuing pandemic-related relief:

[The] Commission’s efforts in response to the COVID-19 pandemic are **centered, first and foremost, on the health and safety of our employees and all Americans.** The Commission’s recognition of the corresponding need of market participants to also **prioritize health and safety** while ensuring the continuity of operations essential to the orderly function of our capital markets.<sup>15</sup> [emphasis added]

**d. Permitting remote functionality relief is not unique: many government agencies, including the SEC, have provided this type of relief.**

The need to provide remote functionality during the pandemic is not unique to firms’ obligations under FINRA Rule 3110(c). The SEC, for example, has provided relief to permit mutual fund boards to meet remotely.<sup>16</sup> The SEC has stated that:

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<sup>13</sup> OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities (Mar. 23, 2020), <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>.

<sup>14</sup> See Miriam Rozen, *SEC Keeping Pace with Enforcements Despite Working Remotely*, FINANCIALADVISORIQ.COM (July 23, 2020), [https://financialadvisoriq.com/c/2818313/344873/keeping\\_pace\\_with\\_enforcements\\_despite\\_working\\_remotely?ref\\_error\\_module=emailMorningNews&module\\_order=14&login=1&code=YkhWamFXRnVieTV0YjNOamFHVjBkR0ZBZDJWc2JITm1ZWEpUyJGa2RtbHpiM0p6TG1OdmJTd2dNakF4TURFeU1Dd2dORFF4TURJM01EVTU](https://financialadvisoriq.com/c/2818313/344873/keeping_pace_with_enforcements_despite_working_remotely?ref_error_module=emailMorningNews&module_order=14&login=1&code=YkhWamFXRnVieTV0YjNOamFHVjBkR0ZBZDJWc2JITm1ZWEpUyJGa2RtbHpiM0p6TG1OdmJTd2dNakF4TURFeU1Dd2dORFF4TURJM01EVTU) (quoting SEC Enforcement Co-Director Stephanie Avakian as saying, “[w]e’ve managed to conduct virtually all the core elements of the enforcement program remotely”).

<sup>15</sup> See generally Chair Jay Clayton et al., SEC, Public Statement, *An Update on the Commission’s Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets* (June 26, 2020), <https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants> (listing Commission approach to pandemic relief and listing various relief provided to the industry, including permitting the use of technology to hold meetings remotely).

<sup>16</sup> See SEC, *Order Under Section 6(C) and Section 38(A) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery*, 85 Fed. Reg. 15841, Investment Company Act Release No. 33817 (Mar. 13, 2020), <https://www.sec.gov/rules/other/2020/ic-33817.pdf>; see also SEC, *Order Under Section 6(C) and Section*

At present, boards of directors of registered management investment companies and BDCs continue to face challenges traveling in order to meet the in-person voting requirements under the Investment Company Act and rules thereunder. For that reason, the Commission recently extended earlier exemptive relief facilitating . . . **remote board meetings and remote approval of certain agreements, plans or arrangements.**<sup>17</sup> [emphasis added]

FINRA and NASAA have implemented a remote testing option for securities industry personnel.<sup>18</sup> The Commission has approved a temporary FINRA rule change that permits National Adjudicatory Council (“NAC”) oral arguments to be conducted remotely.<sup>19</sup> The Commission states in its NAC order:

FINRA Rule 9341(d) provides that oral arguments made in connection with the review of a FINRA disciplinary proceeding take place before the Subcommittee . . . and requires all members of the relevant Subcommittee . . . to be present for the oral argument. The proposed rule change amends Rule 9341(d) to temporarily **permit oral arguments to be conducted by video conference [i.e., remotely].** The requested relief is a **reasonable accommodation to protect the health and safety of all parties participating in these adjudicatory processes.** . . .<sup>20</sup> [emphasis added]

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*38(A) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery*, 85 Fed. Reg. 17611, Investment Company Act Release No. 33824 (Mar. 25, 2020) <https://www.sec.gov/rules/other/2020/ic-33824.pdf>, superseded by SEC, *Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions From Sections 15(c) and 32(a) of the Investment Company Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) Thereunder*, 85 Fed. Reg. 38467, Investment Company Act Release No. 33897 (June 19, 2020), <https://www.sec.gov/rules/exorders/2020/ic-33897.pdf>.

<sup>17</sup> See Chair Jay Clayton et al., SEC, Public Statement, *An Update on the Commission’s Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets* (June 26, 2020), <https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants>; see also *id.*

<sup>18</sup> See *Coronavirus Impact on FINRA-Administered Exams*, FINRA, <https://www.finra.org/rules-guidance/key-topics/covid-19/exams> (last updated May 29, 2020); see also *Novel Coronavirus COVID-19 Updates*, NASAA, <https://www.nasaa.org/industry-resources/covid-19/updates/> (last updated July 13, 2020).

<sup>19</sup> See SR-FINRA-2020-015, <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-015>, and SR-FINRA-2020-022, <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-022>.

<sup>20</sup> See SR-FINRA-2020-015, <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-015>.



Numerous states are rapidly adapting to social distancing in their approaches to remote notarization.<sup>21</sup> The Indiana Securities Division has provided relief from conducting 2020 branch office examinations and has encouraged “[a]ny firm with the ability to **conduct a remote branch examination** during calendar year 2020 . . . to do so.”<sup>22</sup> [emphasis added].

Other federal regulators are following a similar course. The Office of the Comptroller of the Currency has clarified that “national banks and federal savings associations . . . may permit telephonic and electronic [*i.e.*, remote] participation at all board of directors, shareholder, and, as applicable, member meetings.”<sup>23</sup>

Outside the financial services industry, governmental organizations have recognized the safety and operational issues raised by the pandemic and have moved to permitting remote functions. The Food and Drug Administration has issued guidance that “help[s] address [the] **urgent public health concerns** [raised by the pandemic] by helping to expand the **availability and capability of remote patient monitoring devices**.”<sup>24</sup> [emphasis added]. The Federal Emergency Management Agency has stated that “the need to **protect the safety and health** of all Americans . . . FEMA will conduct remote home inspections for disaster survivors until further

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<sup>21</sup> See Eric Goldberg et al., *Current Summary of States Permitting Remote Notarization*, JDSUPRA.COM (May 12, 2020), <https://www.jdsupra.com/legalnews/current-summary-of-states-permitting-31577/>. See also Appendix A SIFMA Remote Notarization Chart.

<sup>22</sup> See Securities Commissioner Alex Glass, Indiana Secretary of State, Securities Division, Compliance Alert, *Temporary Relief from Branch Examination Regulation* (July 13, 2020), <https://buckleyfirm.com/sites/default/files/Buckley-InfoBytes-Compliance%20Alert%20-%20Temporary%20Relief%20from%20Branch%20Examination%20Regulation%20%287.13.20%29%20%20%281%29.pdf>. See also Appendix B for a copy of the Indiana Compliance Alert.

<sup>23</sup> Office of the Comptroller of the Currency, *Shareholder, and Member Meetings: Interim Final Rule*, OCC Bulletin 2020-55 (May 26, 2020), <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-55.html>.

<sup>24</sup> See U.S. Food and Drug Administration, Guidance Document, *Enforcement Policy for Non-Invasive Remote Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (Revised)*, FDA-2020-D-1138 (June 2020), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/enforcement-policy-non-invasive-remote-monitoring-devices-used-support-patient-monitoring-during> (stating “[m]odified use of these devices may increase access to important patient physiological data without the need for in-clinic visits and facilitate patient management by health care providers while reducing the need for in-office or in-hospital services during the COVID-19 public health emergency.”).

notice.”<sup>25</sup> Various local jurisdictions are conducting building inspections remotely through, for example, the use of video calls.<sup>26</sup>

If other government authorities recognize the urgent public health, safety, and operational concerns raised by the pandemic such that, for example, reviews of building safety codes and oversight of personal, physical health can be performed remotely, it seems that the SEC should be able to permit firms to conduct branch exams remotely.

**e. On-site branch inspections are not a legal requirement.**

The requirement for firms to perform on-site, physical inspections of branch offices is not a rules-based legal requirement. FINRA Rule 3110(c) does not state in the rule text that a firm must perform an on-site, physical inspection of branch offices.<sup>27</sup> FINRA Rule 3110 requires firms 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.<sup>28</sup> In particular, Rule 3110(c) requires that firms review the activities of each office and inspect each office. As FINRA has stated: “FINRA has **interpreted the rule to require that inspections take place on-site.**”<sup>29</sup> [emphasis added]. On-site inspections is an **interpretation** and not a **rule**.

In late 2019, the White House issued an Executive Order stating that Americans’ activities should be governed “only [by] those binding rules imposed through duly enacted statutes or through regulations lawfully promulgated under them. . . .”<sup>30</sup> The Executive Order goes on to provide that “[a]gencies may clarify existing obligations through [nonbinding] guidance

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<sup>25</sup> See generally Federal Emergency Management Agency, Fact Sheet, *Individual and Households Program: Remote Inspections* (Apr. 23, 2020), <https://www.fema.gov/news-release/2020/04/23/individual-and-households-program-remote-inspections>. See also Hannah Koeshall, *How to Complete Virtual Inspections During COVID-19*, MUNCICODE.COM, <https://www.municode.com/municode/page/how-complete-virtual-inspections-during-covid-19> (last accessed July 26, 2020) (stating “[i]n the face of the COVID-19 pandemic, many agencies are considering new methods to keep citizens and contractors safe. One way local government agencies are doing this is by reducing any activities that involve in-person contact. . . . Over the past month, the team at MyGov has been working with local agencies to implement virtual inspection practices in an effort to keep community members safe.”).

<sup>26</sup> See, e.g., *City of Centennial Remote Video Inspection Guidelines*, <https://www.centennialco.gov/files/sharedassets/public/documents/building/city-of-centennial-remote-video-inspection-guidelines.docx>.

<sup>27</sup> See generally FINRA Rule 3110, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110>.

<sup>28</sup> *Id.*

<sup>29</sup> See FINRA, *Remote Branch Office Inspections*, Regulatory Notice 17-38 (Nov. 13, 2017), <https://www.finra.org/rules-guidance/notices/17-38>.

<sup>30</sup> *Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents* (Oct. 9, 2019), <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-improved-agency-guidance-documents/>.

documents. . . .”<sup>31</sup> Chair Clayton has reiterated this position in a Statement providing that “[t]he Commission’s longstanding position is that all staff statements are nonbinding and create no enforceable legal rights or obligations of the Commission or other parties.”<sup>32</sup>

While FINRA Rule 3110 is not an SEC rule, all FINRA rules are filed with and reviewed and approved by the SEC pursuant to Section 19(b) the Securities Exchange Act of 1934.<sup>33</sup> One can view the FINRA rulebook effectively as an extension of the SEC’s regulation of the securities industry, particularly in situations where the SEC staff has taken up FINRA interpretations.<sup>34</sup> The policy positions announced in the Executive Order and Chair Clayton’s Statement should apply to the interpretation and enforcement of FINRA Rule 3110. Since the text of FINRA Rule 3110 does not require “on-site” inspections and such requirement is based solely in FINRA staff interpretations, and those interpretations have been assumed by SEC staff through various SEC staff interpretive documents, based on the policy positions outline in the Executive Order and Chair Clayton’s Statement, firms are not bound in law to conduct on-site inspections.

**f. SIFMA’s recommended approach complies with the law.**

As stated above, FINRA Rule 3110 requires firms 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. SIFMA believes firms’ current practices, including the use of technology to supervise employees and to conduct remote inspections, comply with the requirements of FINRA Rule 3110. Pursuant to the Executive Order and Chair Clayton’s Statement noted above, the requirement to conduct an on-site inspection is a non-binding staff interpretation and not a requirement “imposed through duly enacted statutes or through regulations

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<sup>31</sup> *Id.*

<sup>32</sup> Chair Jay Clayton, SEC, Public Statement, *Statement Regarding SEC Staff Views* (Sept. 13, 2018), <https://www.sec.gov/news/public-statement/statement-clayton-091318>.

<sup>33</sup> See Section 19(b), Securities Exchange Act of 1934; see also SEC, Staff No-Action Letter to Robert L.D. Colby, FINRA (May 13, 2020), <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-051320-19b1.pdf> (stating “Section 19(b) generally requires the Commission to review and approve FINRA’s rule filings and rule changes before they can be put into effect.”).

<sup>34</sup> The FINRA staff interpretation regarding on-site inspections can be interpreted as being assumed by the SEC staff through various SEC staff guidance documents that also pronounce an on-site inspection obligation. See generally SEC, Division of Market Regulation, *SEC Staff Legal Bulletin No. 17: Remote Office Supervision* (Mar. 19, 2004), <https://www.sec.gov/interps/legal/mrslb17.htm>; FINRA, *FINRA and SEC Issue Joint Guidance on Effective Policies and Procedures for Broker-Dealer Branch Inspections*, Regulatory Notice 11-54 (Nov. 30, 2011), <https://www.finra.org/rules-guidance/notices/11-54> (stating the guidelines listed in the Regulatory Notice are “based on OCIE . . . staff examinations and Commission enforcement cases [and] are characteristic of good supervisory procedures for branch office inspections, including the use of unannounced onsite inspections.”). See also SEC, Office of Compliance Inspections and Examination and FINRA, National Examination Risk Alert, *Broker-Dealer Branch Inspections* (Nov. 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>.

lawfully promulgated under them.”<sup>35</sup> SIFMA, therefore, believes that the process outlined in this comment letter already complies with all binding legal requirements.

**g. Characteristics of a proposed remote inspection program.**

SIFMA and its members believe that the implementation of a remote branch office inspection program is an appropriate solution given the inability to conduct an on-site office inspection while safeguarding the health and safety of firm personnel. Remote inspection processes could rely on existing technology and tools already in use before the COVID-19 pandemic during the phase of the inspection process prior to an on-site visit and, as stated previously in this letter, would follow the same approach taken by the SEC’s examination program.

A remote inspection program can handle a large majority of the significant elements of the inspection of a branch office. SIFMA member firms have found that a majority of the tasks associated with a branch inspection are completed prior to the on-site visit phase, due to the availability and prevalence of key electronic books and records and supervisory systems. Accordingly, member firms have also found that a majority of all branch inspection findings are identified prior to the on-site visit, including significant findings relating to sales practices, suitability, supervision, and investor protection.

Findings identified in an on-site inspection have also historically been related to lower risk operational issues. A number of the elements of a traditional on-site inspection have had their significance diminished during the COVID-19 pandemic or may be conducted remotely without their effectiveness being impaired. Further, many firms have implemented new processes to eliminate legacy hardcopy documentation requirements that will enhance the efficacy of the remote inspection process.

A proposed remote inspection program could consist of the following non-exhaustive list of basic testing elements, which are standard processes generally followed by a number of SIFMA member firms:

- Pre-visit questionnaires for branch personnel and supervisors, into which firms have incorporated questions relevant to working remotely during COVID-19;
- Review of changes to policies and procedures implemented specifically due to COVID-19 challenges;

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<sup>35</sup> *Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents* (Oct. 9, 2019), <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-improved-agency-guidance-documents/>; Chair Jay Clayton, SEC, Public Statement, *Statement Regarding SEC Staff Views* (Sept. 13, 2018), <https://www.sec.gov/news/public-statement/statement-clayton-091318>.

- Interviews via conference call with personnel and supervisory staff;
- Review of branch product mix vs. firm averages;
- Review of business/product mix of individual personnel;
- Testing of ongoing supervision of personnel by branch supervisors;
- Supervision of producing branch managers;
- Supervision of personnel subject to a heightened supervision plan;
- Supervision of personnel subject to prior disciplinary actions;
- Customer complaints and complaint trends reviewed by branch and individual personnel;
- Employee brokerage account activity;
- Review of outside business activities;
- Review of customer suitability;
- Targeted reviews of personnel electronic communications, including contact management;
- Targeted reviews of social media usage by personnel;
- Targeted internet searches;
- Supervision of actively traded accounts;
- Review of non-cash compensation;
- Product-specific concerns: annuities, mutual funds, ETFs, UITs and complex products; and
- Review of asset movements for anti-money laundering concerns.

SIFMA believes that these testing elements include a significant portion of higher-risk operations and that the processes to review these elements can be adequately addressed remotely. A comprehensive remote inspection program would allow firms to review this significant portion of branch office operations and avoid putting the health and safety of firm personnel at risk. These

remote inspection programs could run for the duration of the COVID-19 pandemic until on-site inspections become feasible.


#### ***IV. Conclusion***

SIFMA and its members appreciate the opportunity to comment on the Temporary Rule. In order to protect the health and safety of firm personnel, SIFMA believes that remote inspection programs offer a suitable alternative to on-site office inspections that would justify temporary relief from on-site office inspection requirements until such time normal operations can responsibly resume and firms can have adequate time to prepare for such inspections.

As noted above, SIFMA believes this approach already complies with existing rules and aligns with how the Commission has adjusted its examination program in light of the pandemic.<sup>36</sup> The approach also furthers the Commission’s stated goal of considering “first and foremost . . . the health and safety of . . . all Americans” when providing targeted regulatory guidance.<sup>37</sup> In particular, permitting the industry to leverage technology to conduct remote inspections would further the Commission’s stated goal of “ensur[ing] continued **remote operations** and to **provide flexibility** in light of continued market volatility” [emphasis added] and would parallel previous relief that permits remote meetings, such as remote board meetings, and the remote approval of certain agreements, plans, or arrangements.<sup>38</sup>

SIFMA’s hopes that in light of the challenges presented by the COVID-19 pandemic, the Commission and FINRA will continue to work with industry participants to adapt to the unique conditions of the current environment.

Very truly yours,



Kevin Zambrowicz  
*Managing Director &  
Associate General Counsel*

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<sup>36</sup> See SEC, Office of Compliance Inspections and Examinations, *OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities*, <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued> (last modified Mar. 23, 2020).

<sup>37</sup> See Chair Jay Clayton et al., SEC, Public Statement, *An Update on the Commission’s Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets* (June 26, 2020), [https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants#\\_ftn6](https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants#_ftn6).

<sup>38</sup> See *id.*

## Appendix A

### SIFMA State Remote Notarization Orders (as of July 15, 2020)

State	Remote Notarization	Language / Notes
<b>Alabama</b>	Temporary	March 26: Limited <a href="#">Order</a> *
<b>Alaska</b>	Yes	Existing law <a href="#">SB 124</a> signed by Governor Apr. 30.
<b>Arizona</b>	Yes	April 8: <a href="#">Order</a> . Accelerated the effective date of remote online notarization from June 30 to Apr. 10.
<b>Arkansas</b>	Yes	March 30: Limited <a href="#">Order</a>
<b>Colorado</b>	Expired	March 27: <a href="#">Order</a> , <a href="#">Notice of Temporary Adoption</a> May 29: <a href="#">Order Extension</a>
<b>Connecticut</b>	Temporary	March 23: <a href="#">Order</a> March 30: <a href="#">Order Extension</a> June 16: <a href="#">Order Extension</a> *
<b>Delaware</b>	Temporary	April 15: <a href="#">Order</a>
<b>Florida</b>	Yes	March 18: <a href="#">Administrative Order</a> . Remote online notarization went into effect on Jan. 1.
<b>Georgia</b>	Temporary	March 31: <a href="#">Order</a> April 9: Limited <a href="#">Order</a> *
<b>Hawaii</b>	Temporary	March 29: <a href="#">Order</a> *, <a href="#">Rules</a>
<b>Idaho</b>	Yes	Existing law
<b>Illinois</b>	Temporary	March 26: <a href="#">Order</a> * April 1: <a href="#">Order Extension</a> *, <a href="#">Guidance</a>
<b>Indiana</b>	Yes	Existing law
<b>Iowa</b>	Temporary	March 22: <a href="#">Proclamation</a> *, <a href="#">Guidance</a>

<b>Kansas</b>	Temporary	April 9: <a href="#">Order</a> May 26: <a href="#">Order Extension</a> June 30: <a href="#">Order Extension</a> (* or Sept. 15)
<b>Kentucky</b>	Yes	Existing law
<b>Louisiana</b>	Temporary	March 26: <a href="#">Order</a>
<b>Maine</b>	Temporary	April 8: <a href="#">Order</a> (30 days after *)
<b>Maryland</b>	Temporary	March 12: <a href="#">Order</a> (30 days after *), <a href="#">Guidance</a>
<b>Massachusetts</b>	Yes	April 27: <a href="#">S. 2645</a> signed as Chapter 71 of the Acts of 2020.
<b>Michigan</b>	Yes	Existing law, <a href="#">Guidance</a> April 8: <a href="#">Order</a>
<b>Minnesota</b>	Yes	Existing law
<b>Mississippi</b>	Temporary	April 6: <a href="#">Order</a> (14 days after *)
<b>Missouri</b>	Temporary	April 6: <a href="#">Order</a> June 11: <a href="#">Order Extension</a> (ends Aug. 28)
<b>Montana</b>	Yes	Existing law
<b>Nebraska</b>	Temporary	April 1: <a href="#">Order</a> (30 days after *)
<b>Nevada</b>	Yes	Existing law
<b>New Hampshire</b>	Temporary	March 23: <a href="#">Order</a> *
<b>New Jersey</b>	Yes	<a href="#">A. 3903</a> signed by Governor Apr. 14.
<b>New Mexico</b>	Temporary	March 30: <a href="#">Order</a> June 11: <a href="#">Order Extension</a> (in effect until rescinded)
<b>New York</b>	Temporary	March 19: <a href="#">Order</a> , <a href="#">Guidance</a> April 7: <a href="#">Order</a> May 7: <a href="#">Order</a> June 13: <a href="#">Order</a> June 26: <a href="#">Order</a> (in effect until rescinded)
<b>North Dakota</b>	Yes	Existing law April 2: Securities Department <a href="#">Emergency Notice</a>



<b>Ohio</b>	Yes	Existing law
<b>Oklahoma</b>	Yes	Existing law
<b>Pennsylvania</b>	Temporary	March 25: Limited <a href="#">Order</a> April 20: SB 841 signed as <a href="#">Act 15</a> , L. 2020
<b>Rhode Island</b>	Temporary	April 3: <a href="#">Order</a> *, <a href="#">Guidance</a>
<b>South Dakota</b>	Yes	Existing law
<b>Tennessee</b>	Yes	Existing law April 9: <a href="#">Order</a> May 12: <a href="#">Order</a> June 29: <a href="#">Order</a> (ends Aug. 29)
<b>Texas</b>	Yes	Existing law
<b>Utah</b>	Yes	Existing law
<b>Vermont</b>	Temporary	March 24: Emergency Administrative <a href="#">Rules</a>
<b>Virginia</b>	Yes	Existing law
<b>Washington</b>	Temporary	March 26: <a href="#">Order</a> , <a href="#">Language</a> July 1: <a href="#">Order Extension</a> (ends Aug. 1)
<b>West Virginia</b>	Temporary	March 25: <a href="#">Order</a> *, <a href="#">Guidance</a>
<b>Wisconsin</b>	Yes	<a href="#">Existing law</a> , <a href="#">Guidance</a>
<b>Wyoming</b>	Temporary	Existing law, <a href="#">Guidance</a>

## Appendix B



**Connie Lawson**  
Secretary of State

# Secretary of State

## State of Indiana

### Securities Division

**Alex Glass**  
Securities Commissioner

## COMPLIANCE ALERT

**TO:** All Broker-Dealers Registered in Indiana

**FROM:** Alex Glass, Securities Commissioner

**DATE:** July 13, 2020

**RE:** Temporary Relief from Branch Examination Regulation

The Indiana Secretary of State, Securities Division ("Division") has continued to monitor developments arising out of the COVID-19 pandemic and determined it is appropriate and in the public interest to issue a Statement of Policy providing relief from the annual compliance examination required by 710 Ind. Admin. Code 4-7-6(d)(9). For further information, registrants should review the full Statement of Policy at the following link: [Current Policy Statements](#).

A brief summary of the Statement of Policy:

- 710 IAC 4-7-6(d)(9) provides that a broker-dealer must conduct an annual compliance examination of each of its branch offices located in Indiana.
- The restrictions on travel caused by the pandemic have made conducting branch office examinations impractical and/or unlawful for a significant portion of 2020. These disruptions have the potential to continue for the remainder of the year.
- As a result, the Division will not initiate an enforcement action for a broker-dealer's failure to conduct a branch office examination during calendar year 2020.
- Registrants are reminded that failure to properly supervise agents and employees remains a dishonest and unethical practice in violation of Indiana securities laws which the Division will enforce pursuant to 710 IAC 4-10-1(22).
- Any firm with the ability to conduct a remote branch examination during calendar year 2020 is encouraged to do so.
- Failure to conduct an annual in-person compliance examination in calendar year 2021 will be treated as a violation that may subject a registrant to an enforcement action unless the Commissioner specifically orders otherwise.

Questions regarding this Alert or Statement of Policy should be directed to [securities@sos.in.gov](mailto:securities@sos.in.gov).

**Indiana Government Center South, E-  
111 Indianapolis, Indiana 46204  
(317) 232-6681, Fax (317) 233-3675**