

Wells Fargo Advisors

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Member FINRA/SIPC

January 12, 2018

Via e-mail at pubcom@finra.org

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

Re: Regulatory Notice 17-38: Remote Branch Office Inspections

Dear Ms. Mitchell:

Wells Fargo Advisors (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Requests for Comment on a Proposal to Amend Rule 3110 (Supervision) to Provide Firms the Option to Conduct Remote Inspections of Offices and Locations that Meet Specified Criteria (the “Proposal”).¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.6 trillion in client assets. WFA employs approximately 18,890 registered representatives in branch offices in retail bank branches across the United States.² WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals.

WFA Supports FINRA’s Efforts to Provide a Remote Inspection Option

WFA supports FINRA’s efforts to make the fulfillment of members’ obligations under 3110(c) more efficient and welcomes the possible adoption of an option to conduct remote inspections of offices locations. WFA currently fulfills its Rule 3110(c) obligations through

¹ FINRA, Regulatory Notice 17-38: Remote Branch Office Inspections (Nov. 13, 2017), *available at*: http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-38.pdf.

² “Wells Fargo Advisors” is the trade name for Wells Fargo Clearing Services, LLC (“WFCS”), a dually-registered broker-dealer and investment adviser, member FINRA/SIPC, and a separate non-bank affiliate of Wells Fargo & Co. “First Clearing” is the trade name for WFCS’s clearing business, providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network, a broker-dealer also providing advisory and brokerage services. For the ease of this discussion, this letter will use WFA to refer to all of these brokerage operations.

annual, comprehensive on-site inspections. In 2017, WFA inspection teams visited 2,157 WFA office locations. The goals of our inspections are to identify potential risks and regulatory issues. Our inspections also provide an opportunity for education and discussion about best practices that ensure our clients get the professional financial help they need.

Members of the teams that perform on-site inspections have significant securities industry experience. Their on-site inspections are preceded by a detailed questionnaire directed to all registered personnel at the office location. The questionnaire covers a variety of topics, including any changes to registration disclosures, and is used to guide on-site discussions and testing. After an inspection, the team issues a written report to office management that includes a rating—“Strong,” “Adequate” or “Weak.” Office locations that receive a “Weak” rating are subject to extensive remediation efforts and receive a follow-up inspection within six months of the previous one. In addition, inspection findings that could be considered a significant violation of WFA policies and procedures or require further investigation are referred for appropriate follow-up action.

These on-site inspections are particularly burdensome relative to their benefit for office locations with few personnel or providing low-risk products and services. WFA has office locations in all fifty states and the District of Columbia and our financial advisors meet with clients wherever and whenever they want within that broad footprint. Thus, significant travel and related expenses are required to fulfill our obligations under Rule 3110(c). Some of these expenses could be reallocated to higher-risk activities, especially given the fact that technology continually plays a larger role in our inspection program and has made remote inspections a viable option for many of our office locations.

In fact, the nature of our current electronic books and records platform and electronic supervisory systems would permit us to conduct robust remote inspections of most office locations. For example, many of our office locations would satisfy proposed supplemental material provision 3110.15(b)(4) regarding the maintenance of “all books and records” because such books and records are already maintained electronically and are retrieved and reviewed remotely by our inspection teams as part of the current branch inspection process. In addition, many of the conversations that take currently place between members of our inspection teams and the various personnel at the office locations they visit during on-site inspections could take place via video conference.

Despite these technological resources, the criteria in proposed supplementary material FINRA Rule 3110.15 poses significant impediments to the availability of the remote inspection option. Specifically, only a small number of our offices meet the definition of “qualifying office.” Unless the remote inspection option is more widely available, we are unlikely to expend the resources to identify and then track office locations eligible for a remote inspection or to develop a remote inspection process.

The Definition of “Qualifying Office” Is Too Narrow

The effect of the proposed definition of a “qualifying office” for WFA is that the remote inspection option would only be available for offices of convenience (i.e., where an associated

person may meet a customer occasionally and exclusively by appointment) or our financial advisors' primary residences, secondary residences or vacation homes. Specifically, the following criteria for a "qualifying office" under Rule 3110.15, as currently proposed, of limited utility:

- "(1) Not more than three associated persons that conduct business for the member are designated to the location."

There are more than three "associated persons" at many WFA office locations, including at our smaller office locations. This is because "associated persons" perform a wide variety of functions at WFA. These functions include non-customer-facing roles, such as operational and supervision functions. The term "associated persons" should be replaced with "customer-facing, registered representatives." The number of customer-facing, registered representatives designated to an office is a better indicator of the types of business conducted at an office location and a more useful threshold for determining the relative size of the office location.

Furthermore, we recommend increasing the number of customer-facing, registered representatives designated to a qualifying office from three to five. Offices with four or five customer-facing, registered representatives have similar businesses with similar levels of risk to those with one, two or three customer-facing, registered representatives and as such the change would make the remote inspection option available to additional offices while still requiring on-site inspections for larger offices.

- "(2) The location is not held out to the public as an office of the member."

This criterion eliminates all WFA offices of supervisory jurisdiction ("OSJs") and branch offices from the possibility of utilizing remote inspections and should be eliminated. Furthermore, even locations such as offices of convenience might use signage that could violate the prohibition on "holding out" to the public as an office of the member. Such signage would not be known via remote inspection and, therefore, would prevent firms from foregoing on-site visits.

- "(5) No customer funds or securities are handled at the location."

This requirement eliminates remote inspections as a possibility for any office location at which a client has simply handed a check to an employee of that office. Furthermore, as is the case for proposed criterion 3110.15(b)(2) regarding "holding out," evidence that personnel at the office location accepted physical funds or securities may not be known via remote inspection. As such, the term "handled" should be replaced with "maintained." Such a change would be consistent with Rule 3110(f)(1)(c), which defines an OSJ as "any office of a member...*maintaining* custody of customers' funds or securities." This change would still mean that "qualifying office" would encompass low-risk office locations because at our office locations, in most instances, checks are scanned day-of receipt and physical securities are mailed within one day.

Changes to Rule 3110.15 Could Be Coupled with Back-Stop Provisions

The elimination or modification of the provisions listed above could be coupled with certain back-stops to ensure that members uphold their obligations under Rule 3110(c). For example, Rule 3110.15 could include a requirement of an initial on-site inspection. Furthermore, the requirement under Rule 3110.15(a) that “[a] member...have policies and procedures reasonably designed to determine whether a location is eligible for remote inspection” ensures that even if the “qualifying office” criteria are simplified to increase the availability of the remote inspection option, the associated risks are minimized. The factors that firms are likely to consider in determining whether to conduct an inspection remotely include the office location’s size, the scope of its business activities, the nature and complexity of the products or services offered at that location and the disciplinary history of associated persons designated to that location. These are the same criteria firms already have experience using to determine the frequency of non-branch inspections under Rule 3110.12 and, thus, will serve as another strong back-stop against abuse of the remote inspection option.

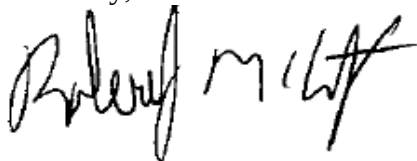
Other Amendments to Rule 3110 Are Needed

The proposal of supplementary material Rule 3110.15 underscores the need to review other aspects of Rule 3110. In particular, the definitions of “OSJ” and “branch office” in Rule 3110(f) need clarity. For example, Rule 3110.15(b)(2) states that a “qualifying office” cannot be “held out to the public as an office of the member.” However, under Rule 3110(f)(2) a “branch office” is by definition held out to the public as an office location of the member and, therefore, it would seem that it cannot also be a “qualifying office.” Yet, Rule 3110.15(b)(6)(iii) presumes that some “branch offices” could be “qualifying offices” so long as they only engage in the supervisory activities described in Rule 3110(f)(1)(B). These inconsistencies are the result of definitions for office locations that have long-caused confusion regarding firms’ inspection obligations under Rule 3110(c)(1). WFA recommends that FINRA use this opportunity to review the definitions of “OSJ” and “branch office.”

Conclusion

WFA appreciates the opportunity to express its support for FINRA’s Proposal and commends FINRA for its efforts improve the internal inspection process. Should you have any questions, please feel free to contact me at robert.j.mccarthy@wellsfargoadvisors.com or 314-242-3193.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy", with a stylized flourish at the end.

Robert J. McCarthy
Director of Regulatory Policy