

Retrospective Rule Review

FINRA Seeks Comment on Lessons From the COVID-19 Pandemic

Comment Period Expires: February 16, 2021

Summary

In response to the coronavirus (COVID-19) pandemic, member firms have made rapid and unprecedented changes to their business operations in order to prioritize the health and safety of firm personnel and investors, while maintaining the public's access to capital markets. These changes include widespread use of remote offices and alternative work arrangements and new and expanded methods of engaging with personnel and investors. Member firms have also used new methods of engaging with FINRA and other regulators and complying with regulatory requirements. For its part, FINRA has taken numerous steps to assist member firms, firm personnel and investors as they navigate the effects of the COVID-19 pandemic.

FINRA welcomes feedback on lessons learned from stakeholders' experiences during the pandemic, including the impact of changes made to member firms' operations and business models, and the effectiveness of business continuity planning. FINRA further requests comment on whether it should consider changes to its rules, operations or administrative processes to address lessons learned during the pandemic or to address anticipated long-term impacts of the pandemic on member firms and investors.

Questions regarding this *Notice* should be directed to:

- ▶ Jeanette Wingle, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8013;
- ▶ Emily Goebel, Assistant General Counsel, OGC, at (202) 728-8235; or
- ▶ Patricia Ledesma, Senior Economist, Office of the Chief Economist, at (202) 728-8461.

December 16, 2020

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Executive Representative
- ▶ Legal
- ▶ Operations
- ▶ Registration
- ▶ Regulatory Reporting
- ▶ Senior Management
- ▶ Systems

Key Topics

- ▶ Alternative Work Arrangements
- ▶ Business Continuity Plans
- ▶ Communicating with Customers
- ▶ Emergency Contact Information
- ▶ Qualification Examinations
- ▶ Remote Offices
- ▶ Supervision

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by February 16, 2021.

Comments must be submitted through one of the following methods:

- ▶ Online using FINRA's comment form for this *Notice*;
- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: Comments received in response to *Regulatory Notices* will be made available to the public on the FINRA website. In general, comments will be posted as they are received.¹

Background & Discussion

The COVID-19 pandemic has brought rapid and unprecedented changes to member firms' business operations. Given the exigent health and safety concerns and the significant impacts of the pandemic on member firms, investors and other stakeholders, FINRA has provided guidance and temporary regulatory relief to firms, associated persons and other individuals through the issuance of FINRA communications, frequently asked questions (FAQs) and temporary rule amendments, without compromising critical investor protection measures or fair processes.² In addition, FINRA has launched several initiatives to respond to issues and questions that have arisen during the pandemic.

FINRA's guidance, temporary regulatory relief and initiatives during the pandemic include:

- ▶ [*Regulatory Notice 20-08*](#) (March 2020) regarding pandemic-related business continuity planning, guidance and regulatory relief to member firms from some requirements;
- ▶ [*Regulatory Notice 20-13*](#) (May 2020) reminding firms of the risks and challenges of fraud during the pandemic;

- ▶ [Regulatory Notice 20-16](#) (May 2020) sharing practices implemented by firms to transition to, and supervise in, a remote work environment during the pandemic;
- ▶ [Information Notice 3/26/20](#) providing cybersecurity measures to consider as firms respond to the pandemic;
- ▶ issuing several [FAQs](#) providing guidance and temporary regulatory relief;
- ▶ issuing an [FAQ](#) regarding the hosting of virtual business entertainment events or meetings;
- ▶ adopting temporary amendments to FINRA rules;³
- ▶ proposing amendments to FINRA Rule 1010 (Form U4 Filing Requirements) to permit firms to obtain an electronic signature on the Uniform Application for Securities Industry Registration or Transfer (Form U4) and a conforming amendment to FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4);⁴
- ▶ delivering an online testing service for candidates seeking to take some qualification exams remotely;⁵
- ▶ publishing several Investor Insights regarding the effects of the pandemic;⁶
- ▶ forming a [COVID Fraud Task Force](#) in March 2020 to establish a coordinated response across the organization to potential COVID-related fraud in the broker-dealer industry and in U.S. markets; and
- ▶ providing as a resource to member firms a [list of state shelter-in-place and stay-at-home orders](#) that impose workplace restrictions in response to the COVID-19 pandemic.

FINRA's pandemic-related guidance, temporary regulatory relief and initiative information, as well as links to the Securities and Exchange Commission (SEC) pandemic-related guidance and resources relevant to member firms, is available on a consolidated [COVID-19 webpage](#) that FINRA created at the outset of the pandemic.

While the COVID-19 pandemic continues, FINRA welcomes feedback on stakeholders' experiences during the pandemic, including how member firms' operations and business models may have changed, both during the current health crisis and potentially going forward. FINRA further requests comment on whether it should consider changes to its rules, operations or administrative processes to address lessons learned during the pandemic or to address anticipated long-term impacts of the pandemic on member firms and investors. An overview of areas of particular focus during the pandemic is set forth below. FINRA recognizes that the pandemic may have highlighted areas of concern with other FINRA rules, operations and administrative processes and FINRA welcomes comment on them as well.

Retrospective Reviews

FINRA periodically reviews its rule sets⁷ to determine whether they are meeting their intended objectives by reasonably efficient means. These reviews encompass not only the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. The reviews also explore whether FINRA can provide additional resources to help member firms' compliance efforts or otherwise further the regulatory objectives of the rules. Among other things, FINRA uses this process to determine whether there are more efficient means to achieve the regulatory objectives without diminishing investor protection.

The retrospective review process typically has two phases: the assessment phase and the action phase. During the assessment phase, FINRA evaluates whether the rule or rule set is meeting its investor protection objectives by reasonably efficient means. The subsequent action phase implements any recommendations arising from the assessment. However, not every assessment results in a rule change. The assessment may conclude that the rule or rule set remains relevant and appropriately tailored to meet its objectives.

To the extent action involves modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the SEC, or both.

With this *Notice*, FINRA seeks to identify rules or rule sets, or their attendant administrative processes, that would benefit from an assessment based on stakeholders' experiences during the pandemic. For any identified rules or rule sets, including those set out below, FINRA is requesting feedback on how those rules and processes have worked—or not worked—during the pandemic and whether there are opportunities based on learnings from the pandemic to make those rules or processes more effective or efficient.

Business Continuity Planning

FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information) requires a member firm to create, maintain, review at least annually and update upon any material change, a written business continuity plan (BCP) identifying procedures relating to an emergency or significant business disruption. BCPs should be reasonably designed to enable a member firm to meet its existing obligations to customers and address existing relationships with other broker-dealers and counterparties. Each member firm has flexibility to tailor its BCP to the size and needs of its business, provided that the BCP addresses the enumerated minimum elements set forth in Rule 4370 to the extent applicable and necessary to the firm's business.⁸

Rule 4370 also requires each firm to provide (and promptly update upon any material change) to FINRA via electronic process or other means as FINRA may specify, prescribed emergency contact information, including the designation of two emergency contact persons, both of whom must be associated persons.⁹ Member firms may register and update their emergency contact persons through the FINRA Contact System (FCS). Visit FINRA's [FCS](#) webpage to access the system.

In 2019, FINRA launched a retrospective review of Rule 4370 to assess its effectiveness and efficiency.¹⁰ In addition, in [Regulatory Notice 20-08](#), published at the beginning of the pandemic in the United States, FINRA encouraged each member firm to review its BCP to consider pandemic preparedness and to review its emergency contacts to ensure that FINRA has a reliable means of contacting the firm. FINRA also encouraged member firms to review their BCPs to consider whether the BCPs are sufficiently flexible to address a wide range of possible effects, such as staff absenteeism, use of remote offices or telework arrangements, travel or transportation limitations and technology interruptions or slowdowns.

FINRA is seeking comment on firms' learnings about business continuity planning from the pandemic, including whether this experience indicates a need for any amendments to Rule 4370 to address issues raised during the pandemic.

Remote Offices, Alternative Work Arrangements and Remote Inspections

Changes to Business Operations

In an effort to mitigate the impacts of the pandemic, member firms have relied heavily on remote offices and alternative work arrangements (*e.g.*, working from home or a backup or recovery location) for a broad range of personnel.¹¹ Increased use of remote offices and alternative work arrangements may have also affected the methods associated persons use to engage with customers. In response, member firms have implemented ways to supervise associated persons who have changed their work locations or arrangements for the duration of the pandemic, in part to comply with Rule 3110's requirement that member firms establish and maintain a supervisory system that is reasonably designed to supervise the activities of each associated person while working from an alternative or remote location.¹²

Registration

FINRA Rule 3110(f) sets forth the definition of an Office of Supervisory Jurisdiction (OSJ) and branch office, and specifies seven exclusions (or non-branch locations) from the branch office definition.¹³ Currently, firms are required to register each branch office,¹⁴ and indicate, among other things, whether it is an OSJ, by filing the Uniform Branch Office Registration Form (Form BR).¹⁵ The designation of an office or location as a branch office primarily affects a member firm's supervisory responsibilities, including the frequency of

inspections, and the annual registration fees paid.

To provide additional flexibility to personnel, some member firms have indicated an interest in continuing to allow use of remote offices or alternative work arrangements by some personnel after the pandemic. Some member firms have requested that FINRA reconsider the branch office and OSJ definitions in Rule 3110 due to expected greater use of remote offices and alternative work arrangements.

FINRA is seeking comment on the utility of current office definitions.

Inspections

Depending upon the functions performed at an office or location, it may be classified as an OSJ, supervisory branch office, non-supervisory branch office, or non-branch location under FINRA Rule 3110(c)(1), which specifies the periodicity of the attendant inspection.

Recognizing that health and safety concerns and state orders have significantly curtailed member firms ability to conduct onsite inspections, FINRA adopted temporary Supplementary Material .16 (Temporary Extension of Time to Complete Office Inspections) under Rule 3110 to extend the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021.¹⁶

In addition, FINRA adopted temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) to provide member firms the option, subject to specified requirements under the supplementary material, to complete remotely their calendar year 2020 and calendar year 2021 inspection obligations under Rule 3110(c), without an on-site visit to the office or location.¹⁷ To provide additional flexibility to firms and its personnel, some member firms have indicated an interest in making such relief permanent.

FINRA is seeking comment on the use and effectiveness of remote inspections.

Engaging with FINRA and FINRA Processes

Engagement with member firms has been a critical part of FINRA's assessment of the need for and appropriateness of guidance, temporary regulatory relief and other initiatives during the pandemic. In addition, FINRA has underscored the importance of member firms communicating with FINRA regarding whether, among other things, examinations, regulatory filings, and responses to FINRA inquiries, matters and investigations may be impacted by the pandemic.

Due to the pandemic, most FINRA staff are working remotely. Leveraging technology has been critical to carrying out FINRA's regulatory mission and responsibilities. For example, FINRA temporarily amended certain timing, method of service and other procedural requirements in FINRA rules to allow, among other things, service of some documents by email.¹⁸ In addition, as noted above, FINRA has proposed amendments to Rule 1010 to permit firms to obtain an electronic signature on the Form U4 and a conforming

amendment to Rule 2263.

FINRA is seeking comment on whether the pandemic conditions have highlighted further changes needed to FINRA communication processes, methods of engaging with member firms or related procedural requirements in FINRA rules.

Qualification Examinations

Due to health and safety concerns and testing center closures and capacity constraints, FINRA provided relief to persons seeking to take qualification examinations. Notably, FINRA extended open examination enrollment windows and extended the period for persons to function as principals or operations professionals without passing the appropriate qualification examination as allowed by FINRA Rules 1210.04 and 1220(b)(3) (B), respectively.¹⁹

In addition, since July 2020, FINRA and NASAA have delivered an online testing service for candidates seeking to take FINRA's Securities Industry Essentials (SIE), Series 6, and Series 7 exams and NASAA's Series 63, Series 65 and Series 66 exams remotely. Since July 2020, candidates have successfully scheduled and taken approximately 15,000 of these exams online.

FINRA is seeking comment on insights from the experience with qualification examinations during the pandemic.

Request for Comment

In addition to the general topics identified above, FINRA seeks feedback on the following specific questions:

Business Continuity Plans (BCP)

1. What has been your experience with implementing Rule 4370 during the pandemic, including any ambiguities in the rule or challenges to comply with it?
2. Should FINRA consider any amendments to Rule 4370 to address issues raised during the pandemic?
3. Did your firm's BCP plan directly or indirectly address the circumstances of the pandemic?
4. Did your firm make or does your firm plan to make any changes to its BCP in response to the pandemic?
5. Does your firm annually test its BCP? If so, are there any changes to testing warranted given what your firm has learned during the pandemic?

Remote Offices, Alternative Work Arrangements and Remote Inspections

6. Are additional guidance, tools or resources needed to assist member firms as a result of changes to their business operations?
7. Does your firm anticipate continuing to allow use of remote offices or alternative work arrangements by some personnel after the pandemic? If so, are there any ambiguities or challenges with FINRA rules that may prevent transition to broader use of remote offices or alternative work arrangements, including intersections with other laws or regulations?
8. Should FINRA consider any amendments to the branch office and OSJ definitions in Rule 3110? If so, what amendments do you suggest?
9. If your firm has inspected any branch office remotely, did your firm experience any challenges conducting the remote inspection? What criteria does your firm use to determine whether a remote or onsite inspection is appropriate for a location?
10. What methods has your firm used to conduct remote inspections?
11. What methods has your firm used to supervise personnel working remotely? What business changes have you made in order to comply with supervision requirements?
12. Has your firm experienced any challenges supervising personnel working remotely? If so, in what particular areas?

Engaging with FINRA and FINRA Processes

13. Should FINRA consider any changes to rules or their application, administrative processes or operations for more effective engagement among member firms, firm personnel, investors and FINRA staff?
14. Can FINRA make its procedural rules, guidance or attendant administrative processes more efficient and effective? If so, how?
15. Should FINRA consider further expanding its use of standardized requests for data routinely requested from firms as part of FINRA's examinations to permit more effective remote inspections and reduce uncertainty to firms?
16. FINRA's rules and programs are only part of a broader framework of securities laws, rules and regulations that govern or affect member firms. Are there requirements from other regulators *for which FINRA has a role in administering* that could be made more efficient or effective (or that have been challenging to comply with during the pandemic)?

Qualification Examinations

17. What have candidates' experiences been with taking qualification exams in test centers or online during the pandemic?

18. Should FINRA consider retaining or expanding online delivery of qualification exams after the pandemic?
19. What has been your experience with the extension of the period for persons to function as principals or operations professionals without passing the appropriate qualification examination, as provided for in SR-FINRA-2020-026 (and any extension thereof), including any challenges or benefits of the extension?

Investors' Experiences

20. What impacts on investors, if any, have resulted from pandemic-related changes to member firms' operations and business models? For example:
 - a. Have investors experienced any difficulty accessing their funds or securities during the pandemic?
 - b. Have investors experienced any challenges in communicating with registered representatives or member firms during the pandemic?
 - c. Which other customer services, if any, were impaired in material ways during the pandemic?
21. What feedback have investors provided concerning pandemic-related changes to member firms' operations and business models?
22. Have investors requested any changes to firms' business processes or procedures in light of the pandemic environment?
23. What changes in retail investor behavior, if any, have been observed during the pandemic? Similarly, what changes, if any, in institutional investor behavior have been observed during the pandemic?
24. Have firms implemented new or additional investor protection measures during the pandemic?

General Effectiveness, Challenges and Economic Impact

What have been the economic impacts, including costs and benefits, of the rules mentioned above? To what extent do the costs and benefits have a disproportionate impact on firms based on size and business model? Have the rules led to any negative or positive unintended consequences?

25. What unintended consequences, if any, during the pandemic have arisen as a result of FINRA's rules or FINRA's application of its rules?
26. Are there any ambiguities in the rules that FINRA should address to aid firms while ensuring investor protection concerns are addressed?
27. Did any group or subset of investors, associated persons of member firms or candidates for qualification exams experience any difficulties or challenges due to a lack of access to the connectivity or other technology necessary to avail themselves of online services?

Endnotes

1. Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact or edit personally identifiable information from comment submissions. FINRA also reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters.
2. FINRA previously provided guidance on pandemic preparedness in *Regulatory Notice 09-59* (October 2009).
3. Pursuant to [SR-FINRA-2020-040](#), FINRA has adopted temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) to provide member firms the option, subject to specified requirements under the supplementary material, to complete remotely their calendar year 2020 and calendar year 2021 inspection obligations under FINRA Rule 3110(c) (Internal Inspections), without an on-site visit to the office or location.

Pursuant to [SR-FINRA-2020-027](#), as extended by [SR-FINRA-2020-042](#), FINRA temporarily amended Rules 1015, 9261, 9524 and 9830 to allow hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders to be conducted by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. The temporary amendments became operative on October 1, 2020, and are in effect through April 30, 2021, pending any future extensions.

Pursuant to [SR-FINRA-2020-026](#), as extended by [SR-FINRA-2020-043](#), FINRA has adopted: (1) temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration Requirements); and (2) temporary Supplementary Material .07 (Temporary Extension of the Limited Period for Persons to Function as Operations Professionals) under FINRA Rule 1220 (Registration Categories) to extend the 120-day period that individuals designated prior to January 1, 2021, can function as a principal or Operations Professional without having successfully passed an appropriate qualification examination through April 30, 2021.

Pursuant to [SR-FINRA-2020-019](#), FINRA has adopted temporary Supplementary Material .16 (Temporary Extension of Time to Complete Office Inspections) under FINRA Rule 3110 (Supervision) that extends the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) (Internal Inspections) to March 31, 2021.

Pursuant to [SR-FINRA-2020-015](#), as extended by [SR-FINRA-2020-017](#), [SR-FINRA-2020-022](#) and [SR-FINRA-2020-042](#), FINRA has temporarily amended certain timing, method of service and other procedural requirements in FINRA Rules 1012, 1015, 6490, 9132, 9133, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559 and 9630. These temporary amendments are effective from May 8, 2020, through April 30, 2021, pending any future extensions.

4. At its September 2020 meeting, FINRA's Board of Governors approved filing the proposed rule amendments with the SEC. See [Report From FINRA Board of Governors Meeting – September 2020](#). This proposed rule change would remove the last manual signature requirement from the FINRA rulebook.

5. Additional information regarding remotely proctored qualification exams is available at [Coronavirus Impact on FINRA-Administered Exams](#).
6. See [The Coronavirus Is Novel, but Crisis-related Scams Are Nothing New](#) (Oct. 2020); [COVID-19 Early Withdrawals](#) (June 2020); [Fraud and Your Investment Accounts During COVID-19 Pandemic](#) (May 2020); [Financial Peace of Mind in the Age of Coronavirus](#) (March 2020); and [Fraud and Coronavirus \(COVID-19\)](#) (March 2020). The Investor Insight “COVID-19 Early Withdrawals” was published jointly by FINRA, NASAA and SEC staff. The Investor Insight “The Coronavirus Is Novel, but Crisis-related Scams Are Nothing New” was published jointly by NASAA and FINRA staff.
7. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.
8. Rule 4370(c) requires that each BCP, must at a minimum, address: (1) data back-up and recovery (hard copy and electronic); (2) all mission critical systems; (3) financial and operational assessments; (4) alternate communications between customers and the member; (5) alternate communications between the member and its employees; (6) alternate physical location of employees; (7) critical business constituent, bank, and counter-party impact; (8) regulatory reporting; (9) communications with regulators; and (10) how the member will assure customers’ prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.
9. This requirement is intended to ensure that FINRA has a reliable means of contacting each member firm in the event of an emergency. One contact must be a member of senior management and a registered principal of the member firm and the second contact, if not a registered principal, must be a member of senior management who has knowledge of the firm’s business operations. For a firm that has only one associated person (*e.g.*, a sole proprietorship without any other associated persons), the second emergency contact person may be an individual, either registered with another firm or nonregistered, who has knowledge of the member firm’s business operations, such as the firm’s attorney, accountant or clearing firm contact.
10. See [Regulatory Notice 19-06](#) (April 2019).
11. In [Regulatory Notice 20-08](#) FINRA temporarily suspended the requirement to: (1) maintain updated Form U4 information regarding office of employment address for registered persons who temporarily relocate due to COVID-19; and (2) submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. In [Regulatory Notice 20-08](#), FINRA stated that, when appropriate, we will publish a [Regulatory Notice](#) announcing a termination date for the regulatory relief that will provide member firms with time to make necessary operational adjustments.
12. FINRA has provided guidance, tools and resources to assist member firms as they made changes to their business operations during the pandemic. See, *e.g.*, [Regulatory Notice 20-16](#); [Information Notice 3/26/20](#); and FINRA’s [Compliance Vendor Directory](#), which includes cybersecurity offerings for member firms dealing with remote work arrangements.

13. Among these non-branch locations includes a temporary location used as part of a business continuity plan. See Rule 3110(f)(2)(A)(vii).
14. See Article IV, Section 8 of the FINRA By-Laws.
15. Section 2 of Form BR requires the applicant to indicate whether an office is a FINRA OSJ or non-OSJ branch. Following the termination of the temporary suspension of the Form U4 and Form BR filing requirements provided in *Regulatory Notice 20-08*, a member firm may permit an associated person to continue working from a location that was established as a result of the pandemic. For each location, the member firm will need to assess whether the location should be registered as a branch office. The street address of each branch office registered pursuant to Form BR will be publicly displayed on BrokerCheck.
16. See [SR-FINRA-2020-019](#).
17. See [SR-FINRA-2020-040](#).
18. See [SR-FINRA-2020-015](#), as extended by [SR-FINRA-2020-017](#), [SR-FINRA-2020-022](#) and [SR-FINRA-2020-042](#).
19. See [Coronavirus Impact on FINRA-Administered Exams](#) and [SR-FINRA-2020-026](#), as extended by [SR-FINRA-2020-043](#).