Bond Dealers of America

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February 16, 2021

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K St NW
Washington DC 20006

In regard to Regulatory Notice 20-42

Dear Ms. Mitchell,

The Bond Dealers of America is pleased to comment on Regulatory Notice 20-42, "FINRA Seeks Comment on Lessons From the COVID-19 Pandemic." BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

The COVID-19 pandemic is obviously a global tragedy. We all mourn the loss of loved ones and regret the deep economic pain the pandemic has caused for so many. BDA supports reasonable efforts to provide assistance to those suffering the most and to jump-start an economic recovery.

Fixed income dealers have responded well to COVID. In preparing our response to Notice 20-42, BDA talked with a number of our member firms with respect to their experience in addressing issues that have arisen from the pandemic. This letter reflects that feedback. Firms have generally reported that after the market disruption of February and March 2020, the industry and the market recovered surprisingly quickly. Every firm we talked with reported that they have been operating at full capacity with no break in their ability to service customers and provide liquidity. 2020 was a record year for issuance in corporate and municipal bonds. U.S. underwriters last year successfully placed nearly $2.8 trillion of bonds for their municipal and corporate issuer clients despite many employees working remotely and other challenges posed by COVID. We are surprised that the pandemic has not caused more disruption in business processes.

That is not to say that our experience with the pandemic was without hurdles. The volatility in pricing and loss of market liquidity in March and April caused real disruption for issuers and investors. Fortunately, the fixed income markets have more than recovered since then and have been operating smoothly for many months.

BDA commends the proactive and constructive actions which FINRA and other regulators took last year to provide flexibility to firms with respect to compliance, examination, and enforcement issues in the context of COVID. FINRA showed sensitivity to the challenges faced by dealers without threatening investor protection or market safety and soundness.

Business continuity plans

FINRA Rule 4370 requires dealers to "create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption." Many dealers executed their BCPs last year as it became clear that remote work was necessary to protect firms' employees and customers. In general firms' BCPs worked well and provided a means for employees to continue working. Several observations emerged from our conversations with firms.

- BCPs were often drafted with location-specific emergencies in mind. BCPs became especially important and relevant after 9/11 and superstorm Sandy. Although very different kinds of disasters, both involved the destruction or lack of access to primary business locations and to the failure of IT and other systems. Many dealers' BCPs reflect preparation for that kind of disaster. Clearly the pandemic is nothing like that. There is no loss of access to physical locations or inability to leverage company systems.
- Many firms' BCPs focus on alternative, centralized work locations, backup facilities where employees can gather to conduct business when primary facilities are not accessible. In the context of the pandemic, that was not always the best solution. Some firms' backup facilities are designed to be more densely occupied than their primary facilities, obviously not an acceptable feature when social distancing is the norm. We anticipate that as firms adapt their BCPs based on their pandemic experiences, there will be more reliance on working from home and less reliance on centralized backup facilities.

<u>Remote work</u>

Perhaps the best story to come from the pandemic is how well firms and their employees have adapted to working from home or other remote locations. By necessity, fixed income firms have quickly and effectively transformed their work processes to adapt to remote work with no loss in their ability to service customers, supervise employees, or comply with regulations. Part of the reason for this success is recent advances in technology. Firms have described IP-based phone systems, for example, that allow employees to plug their office desktop phones into home internet routers and have full telecommunications functionality at home as if they were in the office. Given that such a large volume of bond trading still takes place by telephone, access to phone systems is vital to maintaining liquidity for customers. Others described implementing virtual "hoot-n-holler"-type systems that allow constant, open voice communication among traders and salespeople as if they were all sitting on the same trading floor.

Technology has also made huge improvements in firms' ability to supervise employees remotely. It is no longer necessary for supervisors and employees to be on the same floor or even in the same city to ensure appropriate supervision. Trade management systems allow supervisors to monitor their employees' trading activity in real time remotely from anywhere in the world.

Remote work has been so successful that some firms are considering implementing it on a permanent basis after the pandemic has passed, perhaps not for all employees all the time, but for a significant number. Firms have reported that as office leases have come up for renewal, some have considered shrinking the size of offices or eliminating some offices altogether based on the idea that some employees will continue to work remotely indefinitely. Those offices that remain will in some cases be redesigned to adapt to social distancing requirements. One firm described how their open bond trading floor provides five feet of spacing between employees, not six, for example, and the office layout will require revision before all employees return to work.

Remote work will be part of the "new normal" even after the pandemic recedes, and FINRA rules should accommodate this. Dealers have demonstrated over the last year that they can effectively manage and supervise employees remotely, and FINRA rulebook should support this kind of work arrangement.

<u>Inspections and examinations</u>

We appreciate FINRA's flexibility during the pandemic with respect to examinations and inspections. With regard to on-site inspections of branch offices and offices of supervisory jurisdiction (OSJ), FINRA said on March 9, 2020 in regard to branch office inspections "a member firm's scheduled on-site inspections of branch offices may need to be temporarily postponed during the pandemic, with FINRA understanding that the ability to complete this annual regulatory obligation in 2020 may need to be re-evaluated depending on the duration and severity of the pandemic." (FINRA Regulatory Notice 20-08) FINRA also adopted a temporary rule change that gives member firms until March 31, 2021 to complete 2020 branch office inspections. This kind of flexibility is important for firms managing through pandemic-related challenges.

In general, to the extent that FINRA provides COVID-related relief, we encourage you to refrain from applying specific deadlines when the relief will expire. It is impossible to predict when the crisis will wane sufficiently for firms to resume normal business activity. Rather than applying specific deadlines, we encourage the agencies to make relief guidance indefinite and to monitor changes in the pandemic and market conditions and rescind the guidance as appropriate.

FINRA Rule 3110 governs supervision. Paragraph (c) of the Rule specifies requirements to inspect branch offices and OSJs. Branch offices must be inspected every three years, and OSJs must be inspected annually. Paragraph (f)(1) of the Rule defines OSJ as the location where order execution, market making, and endorsement of customer orders, among other functions, takes place. Paragraph (f)(2)(A)(ii) of Rule 3110 specifies that an employee's "primary residence" is not a branch office if certain conditions are met even if it is an employee's primary place of work. From the Rule it appears that a trader working at home with authority to make trade execution decisions is an OSJ. However, we do not believe it is FINRA's intention to require inspections of employees' homes even if they are working from home. We therefore urge FINRA to amend Rule 3110 such that a trader, salesperson, or banker working remotely who is otherwise supervised as required under Rule 3110 would not be an OSJ or a branch office.

On cycle examinations, FINRA has appropriately suspended most in-person office visits. We believe the current system of cycle examinations is working well. The only issue firms have noted is that remote work sometimes means it takes longer to assemble documents in preparation for a cycle exam. It is just not possible to walk down the hall to a colleague's office to, say, retrieve a missing file. We note that FINRA CEO Robert Cook in a public statement last fall stated that FINRA is considering adopting a "risk-based" approach to determining case-by-case whether in-person visits are necessary going forward.[1] We generally support that approach.

We believe FINRA should take a risk-based approach generally to regulating remote work. Flexibility is key. Firms need the ability to make fast decisions about work arrangements without risking violating

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[1] Jessica Matthews, "FINRA weighs scaling back in-person portion of cycle exams: CEO," *FinancialPlanning*, September 24, 2020, www.financial-planning.com/news/finra-may-scale-back-in-person-portion-of-cycle-exams-ceo-robert-cook.

FINRA rules. Firms will consider many factors in determining who should work in an office and who should work remotely, including job function, degree of supervision required, physical spacing issues, geographic variations in the spread of the virus, ages and medical conditions of employees, and other considerations. It is vital that FINRA rules permit managers to make decisions about work arrangements that best protect the safety of firms' employees and customers. The industry needs a clearly defined set of rules that reflects the new normal and treats remote work as standard practice.

Customer privacy

SEC Regulation S-P governs maintaining the privacy of customer nonpublic personal information, including personally identifiable financial information, and to customer disclosures related to firms' privacy policies. Regulation S-P states "Except as otherwise authorized in this subpart, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer."

Regulation S-P also mandates that firms have policies and procedures designed to "address administrative, technical, and physical safeguards for the protection of customer records and information." These policies cover such areas as ensuring the security and confidentiality of customer records and information and protecting against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Questions related to compliance with Regulation S-P have arisen in the context of remote working. In examining member firms, how will FINRA examiners treat issues related to protecting customer information? For example, what steps should firms take to ensure that customer nonpublic personal information which may be accessible via employees' remote system access is not compromised? If employees are working in a public place like a café, how should firms ensure that customer nonpublic personal information is not observed by others?

In addition, privacy and data protection rules have resulted in many firms instituting policies where employees are not permitted to print business documents when not in an office environment. A statement from FINRA addressing this issue would provide guidance to compliance policy setters within firms that relaxing these print-at-home polices is acceptable while significant numbers of employees are working remotely. Indeed, flexibility around remote printing should be a permanent element of FINRA and SEC rules.

TRACE and RTRS trade reporting

FINRA Rule 6730 requires member firms to report trades in TRACE eligible securities to the TRACE platform no later than 15 minutes after execution with certain exceptions for off hours trades and others. BDA is concerned that communication delays related to remote working could cause delays in trade reporting. In examining for compliance with Rule 6730, we encourage FINRA to provide flexibility on TRACE reporting times in recognition of possible delays due to remote work.

Conclusion

The COVID-19 pandemic has disrupted work processes across the economy. The bond dealer community has adapted extraordinarily well to the challenges posed by the crisis. Dealers have implemented systems and procedures that have allowed them to continue servicing customers, operating safely, and supervising employees.

FINRA has responded constructively and appropriately. We appreciate the flexibility FINRA has provided during these unprecedented times.

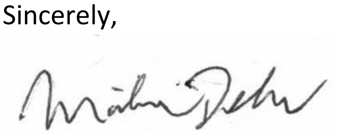
It is our understanding that other regulators like the SEC and the Municipal Securities Rulemaking Board are also examining their regulations that apply to remote work and other issues brought about by the pandemic. It is important that FINRA and the other agencies collaborate closely and conduct parallel rulemaking as appropriate.

We ask FINRA to consider several permanent policy changes in recognition of the likely permanence of alternative work arrangements. Beyond these specific changes, we urge FINRA to adapt its rulebook in general to the reality that many firms will continue to depend on remote work for a long time, and firms have demonstrated that can be done safely and soundly. Give us the rules to do what we are doing now on a permanent basis.

- Amend Rule 3110 such that employees conducting trading, sales, or banking activity from home who are supervised as the Rule requires do not mandate annual inspections of employees' homes;
- Consider a risk-based approach to determining whether in-person visits are necessary in the context of FINRA cycle examinations;
- Issue guidance that remote printing is acceptable in the context of the pandemic and remote work;
- Provide continued flexibility with respect to TRACE trade report deadlines; and
- Issue pandemic-related guidance and rule changes without specific expiration dates and monitor conditions and repeal guidance as necessary.

We look forward to working with you on these issues going forward.

Sincerely,



Michael Decker
Senior Vice President