

NFA and the NIBA joint webinar: Supervision in a Hybrid Environment
December 8, 2021

Katie Tervin: Good afternoon and welcome to *Supervision in a Hybrid Environment*, a joint webinar hosted by the NFA and NIBA, the Association for Derivatives Professionals. My name is Katie Tervin and I am the controller of Zander Financial Services and a member of the NIBA's board. We have a full agenda with key topics discussing NFA's supervision requirements as they pertain to hybrid and remote work environments. Before we begin, I'll quickly run through some housekeeping notes before we start. Time has been allocated at the end of the webinar to answer your questions. You can submit questions for the Q&A segment of today's presentation through the built-in Q&A function, which is located on the bottom right-hand side of your screen. Feel free to submit your questions now, or at any time during today's webinar. We can see the questions as they are submitted.

Additionally, recording of the webinar in a written transcript will be available on the NFA website in the coming weeks. I'd like to thank Katie Clapper, managing director compliance, NFA, Tom Hart, CFE, compliance manager, NFA, and Matthew Kluchenek, partner at Mayer Brown and counselor to NIBA for participating in today's webinar. That's all for housekeeping. I'd now like to introduce the founder and chairman of the NIBA, which is celebrating its 30th anniversary this year, Melinda Schramm.

Melinda Schramm: Thanks, Katie. I'm Melinda Schramm. And as Katie said, I am the founder and chairman of the NIBA. I want to add my welcome and behalf of the entire NIBA board of directors and thank you for attending the NFA and NIBA joint webinar. We have over 625 individuals registered for today's very timely program. I know we'll get some questions answered and we'll learn quite a bit more about supervision and a hybrid environment in the next hour. NIBA is celebrating its 30th anniversary, as Katie said, and for 30 years the NIBA has represented the views and opinions of registered derivatives professionals and provided the access to the education and to regulators, which IBs and CTAs need to run a successful futures and options business. Over the past 30 years, NIBA has changed with the industry and with the needs of our Members. We embrace new products and new ways to trade.

We've rose above the hardships brought about as a result of the failures of MFG and Harrison Group. We adapted to the regulatory and technological change and for the past 20 months, we faced down what has surely been one of, if not the, toughest professional, and for many of the toughest personal challenge to keeping our businesses open. Since 1991, NIBA gatherings have been the place for IBs, CTAs, FCMs and their brokers to come together to learn about regulatory change, technology innovation and marketing updates. For NIBA, like the rest of our industry, COVID has meant no in-person meetings or conferences. So today, I'm especially excited and proud to continue NIBA's year-long celebration with this third webinar in our anniversary series. It's particularly fitting for us to share the hosting responsibilities with NFA in

recognition of the working relationship between regulator and those who are regulated. Personally, and on behalf of the entire NIBA board of directors, I want to thank the NFA and specifically the amazing team we've worked with to plan and present today's webinar.

I also want to invite you to take another look at all the NIBA has to offer by checking our website, theNIBA.com. Call me or any member of the board of directors if you have suggestions, or if you'd like to get involved in the association. Now I'd like to introduce Matt Kluchenek. Matt Kluchenek is a partner in the law firm of Mayer Brown. He is a member of the firm's litigation and dispute resolution group in the firm's derivatives, FinTech, and white-collar defense practice areas. He has an extensive background in the financial services, and he represents many IBs and FCMs, CPOs and CTAs, and even exchanges with respect to enforcement, regulatory and other matters. He's also an adjunct professor at Northwestern University's law school, where he teaches the course on derivatives law. Matt's serves as legal counsel to NIBA, and today he will moderate the presentation. So, with that, happy holidays and best wishes for a healthy and prosperous new year. I'm looking forward to seeing each and every one of you at our continued virtual events and in-person in 2022. Matt?

Matt Kluchenek: Thanks, Melinda. It's great to be here. And Melinda, congratulations to you and NIBA on 30 fantastic years and the celebration of a really important anniversary. So again, great to be here today. I'll be the moderator and have the pleasure of interposing questions and providing some views, and moderating again, the remarks of Katie Clapper and Tom Hart. So today we're going to try to cover four broad areas. Those four areas are remote oversight of associated persons and employees, broker communications, order handling, and trading activity supervision. Then we'll cover technology and information security, and lastly, but certainly not least, record keeping. So, as you've heard from Melinda and the other Katie, questions are welcome, let them fly, the more, the better. We'll do our best to get through all of them. And with that, I will turn it over to Katie Clapper.

Katie Clapper: Thanks, Matt. And thanks, Melinda, for having us today. So, I think stepping back, everyone is familiar with the duty to diligently supervise employees who are conducting commodity interest activities, but we all recognize that that's been turned on its head a little bit with the pandemic that's been ongoing, as well as some new flexibility that APs now have to work from remote locations. For a little background, I think the audience is aware that in September NFA modified its interpretive notice related to branch office registration requirements to exclude any remote working location or flexible shared workspace where one or more APs from the same household work, assuming certain criteria are met. So that does allow now APs to have more flexibility, firms permitted, to work from remote locations. So what does that then do to supervision? This is a really important topic that our Member firms need to consider fully before they begin permitting APs to work remotely. And really it all comes down to risk.

So, if an AP does decide that it will permit APs to work remotely, the Member firm needs to consider what written policies and procedures need to be in place. And those have to outline the criteria that the Member considered to approve an AP to work remotely. And there's three major, risk buckets that we think at a minimum a Member firm would need to consider, the first being the scope of activities and responsibilities of that AP. So, what is this? The job responsibilities, what is the AP doing on a day-to-day basis? Is that AP soliciting customers, are they soliciting customer orders? Perhaps on the other hand there, the AP maybe is just doing order entry activities. Is the AP responsible for supervising other APs? So really a full vetting of the job responsibilities and what risks those potential job responsibilities neighboring.

The second category would relate to an AP's background. Some of the considerations that we would expect a Member to look into are the same that a Member should be doing when they're doing their initial due diligence of a prospective AP, such as the outcomes of a background check, any prior or pending disciplinary matters, an AP's disciplinary history or disciplinary history of prior employers. Going a step further though, a Member would need to also consider any customer complaints that they are aware of regarding an AP or any ongoing investigations or regulatory inquiries. So, it would be all relevant considerations to, again, assess the risk that an AP may pose and the risk of that AP working remotely. And finally-

Matt Kluchenek: Katie, oops, I'm sorry, if I can, as moderator to jump in with a quick question here. And so, recognizing that there is no formula and this is all qualitative and risk-based, is there anything that's come to NFA's attention in terms of considerations that is a concern or maybe even kind of close to, per se problematic, thinking, for example, if an AP, hypothetically, has a certain type of criminal background or a certain lack of experience or whatever the case may be, any thoughts at this early stage about likely concerns?

Katie Clapper: Matt, I think it's all going to come down to how affirm can mitigate that risk. So sure, if you have an AP with a disciplinary background, and maybe that disciplinary action related to misleading sales solicitations, and voice on the phones and misleading solicitations on the phone, can you mitigate that? Are you recording? How are you going to oversee that if that AP is remote? So, sure there's going to be more serious, probably disciplinary histories that you would have to have a pretty sound and robust protocol and procedures to satisfactorily mitigate that risk. But I think that firms are really going to have to take a look at those and decide for themselves if they can mitigate any risks posed by some of those more severe scenarios or hypothetical scenarios.

Matt Kluchenek: Great. Thanks.

Katie Clapper: Sure. And so, the last, I guess, the last category that we would expect Members to consider when in criteria when they're deciding if AP can work remotely would be the risk posed by the AP's location. So, firms need to understand and approve where an AP is working from. We wouldn't expect an AP to be working, let's say, from a public location, like a coffee shop, where they may

potentially be talking about confidential customer information or taking orders. So, we would expect firms to understand where the AP is and that it's a sufficiently private location. And also take into consideration if an AP is working from a share or a flexible workspace, who else may be there? Members also would want to consider if an AP is requesting to work from a high-risk jurisdiction, and high-risk from more we're thinking of cybersecurity perspective. Are there additional cyber risks or concerns if an AP wants to work from one of those higher risk locations?

So, that would be an initial assessment, right, of the different things that affirm we would expect to consider and have written policies and procedures surrounding those considerations. But that assessment does need to be ongoing, especially as there are material changes and say an AP's job responsibilities, location, perhaps someone moves, or any new complaints, investigations or regulatory matters come to light. We would expect firms to assess the appropriateness of having that AP continue to work remotely and determine if the risks can continue to be mitigated. So overall, I think the big picture here is that Members just need to consider the risks associated with the AP working remotely and whether they can sufficiently mitigate those risks and implement supervisory framework to do that.

Matt Kluchenek: And Katie, with another question here. So, when, you talk about assessments, of course, ever important, any guidance in terms of the frequency of assessments? For example, monthly, annually, or should it be based upon material new events or developments, any thoughts around that?

Katie Clapper: Yeah, I mean, I think definitely if there's a material development, the Member would want to reconsider right then. I don't think he wants something like that to go on for a full year. I think thereafter, at least maybe an annual assessment would be reasonable to say, yes, we're still comfortable with the criteria are all still met that we're comfortable with as a Member and we can sufficiently mitigate those risks.

So, from there, I think, I can turn it over to Tom to discuss some of the supervision of broker communications, order handling and trading activities.

Tom Hart: Thank you, Katie. So just to begin, obviously the requirement for written supervisory procedures is not new, but just wanted to touch on some additional considerations as firms consider moving into a remote or hybrid work environment. The first of these being the identification of what the firm considers acceptable equipment, including software and applications used to either communicate with customers, handle orders or conduct trading activity. Included within this would be a discussion on the potential use of personal devices and whether or not that would be allowed for APs or employees now working remotely and ensuring that the firm has proper applications or software set up to record and maintain any required regulatory records, including communications on personal devices.

One thing that's also important to note, with respect to written supervisory procedures, it's important that the procedures are in writing so that firms can

demonstrate their compliance with their policies and procedures. So, employees and APs can be made aware of the firm's written policies, procedures, and can be trained on them periodically. And also, to ensure that the policies and procedures are repeatable in the event that there is either firm turnover or new personnel conducting certain supervisory responsibilities.

Matt Kluchenek: Hey, Tom, question for you as well, if I may. So, when we talk about acceptable equipment and communication, apparatuses' applications, again here, anything per se impermissible or that would be recommended firms avoid?

Tom Hart: I think part of that would be considering the record keeping requirements. So, I think as long as the firm is comfortable that whatever devices work is being used, is set up to properly record and maintain the required records such as written communication, written pre-trade communications, as well as anything related to the handling of customer orders or trading records. So generally speaking, I think as long as the firm is comfortable that is able to satisfy its record keeping requirements, I think that's the most important component. Obviously, there are additional risks that might come up with allowing personnel to use personal devices. It could be cybersecurity risks, things of that nature. So, I think it kind of is dependent upon if the firm can be comfortable that it's meeting its regulatory obligations in terms of recordkeeping on those devices.

Matt Kluchenek: Great. And on this slide, when it talks about ongoing training, so I think a lot of firms conduct training on an annual basis. Some firms do it a bit more frequently, some firms do it not quite annually, but every couple of years. And Tom, with your examination hat on, any thoughts, guidance with respect to, from your perspective, sort of a best practice scenario on how often trainings should be conducted?

Tom Hart: Yep. So obviously, that's dependent upon what training is required. I think when it comes to firm policies and procedures, the most common is kind of an annual training on any policies and procedures to ensure that employees are staying up-to-date, are aware of any maybe developments, any changes in the policies and procedures. Obviously if there's any material developments as a firm makes a significant change to those policies and procedures, we might expect that training occurred more frequently. But I think the most common best practice that we see that isn't at least an annual training to employees on firm policies and procedures.

Matt Kluchenek: Right. Okay. Thanks.

Tom Hart: Yup. And then briefly, just kind of expanding on the training requirements, I think it's important to consider any training that might be necessary for employees or APs working remotely on any new technology or equipment that's being implemented by the firm. So that employees are properly trained and aware of how to use this equipment to meet its regulatory obligations. And moving on here to the next section, where we get into reviews of pre-trade communications, and order handling and trading activity. The next slide here, with respect to pre-trade communications, obviously it's important that

Members have an adequate supervisory framework to monitor the activities of any employees that are working remotely. Considering that real-time supervision in an office environment may no longer be possible, the firm's procedures should outline and be detailed on how those written pre-trade communications and potentially for certain Members other oral or voice communications will be reviewed on a periodic basis.

Some things to consider here are the use of either automated tools or potentially manual reviews of pre-trade communications. This could be done through spot checking or random sampling. Certain Members may elect to conduct full trade reconstructions where pre-trade communications are reviewed. And they also may elect to use a more automated features such as keyword searches to highlight potential flag communications that may require additional follow-up. With respect to communications, it's also important where possible that firms, the individuals or personnel completing these reviews, are independent of the sales or trading function. That's obviously something that may not be possible for smaller firms. But where possible, I think it is important that firms consider having other personnel who are appropriately trained and qualified obviously, but other personnel conduct these reviews from an independent perspective, so that they maintain independence of that sales and trading function.

And I think when we get into the details of these pre-trade communication reviews, I think it's important some of the considerations is the volume of trading, including the volume of those communications, how many communications are there to review and I think that will kind of drive what methods or techniques the firms use to conduct those reviews. I think from a written supervisory perspective, it's important that the procedures outlined the process, the scope and the frequency of these reviews in order for those reviews to be repeatable, and the firm demonstrate that they comply with the procedures.

Matt Kluchenek: Tom, this is a bit of a more general question, but in the context of these reviews, let's say there's red flags or yellow flags, whatever you want to call them, what are NFA's expectations in terms of escalation and next steps?

Tom Hart: Yep. I think from the procedures, it should clearly outline how the firm, when a red flag or a flag communication or trade, how-what process the firm will go to escalate those communications or trades, including who will be responsible for following up, the types of communications that would be considered problematic and require escalation, and also for the firm to maintain adequate audit trail of how those communications were resolved, from essentially the point where they were flagged all the way until they were ultimately resolved by the firm. So, I think it's important that the firms kind of specify what specifically they're looking for, what is considered problematic and what requires escalation, and then detail the entire escalation process, including who was involved in that, whether it's senior management, direct supervisors or et cetera, and that might be dependent upon the nature of the flag communication or trade.

And then one additional point on supervision, particularly with employees maybe moving to a remote working environment, I think it's important to consider that real-time supervision may not alone be sufficient, whether it's voice communications or trading activity, that firms really should be considering putting in place expansive post-trade reviews, and reviewing whether it's voice communications or written communications on a post-trade basis as well, and not just solely relied on real-time supervision, particularly for those employees where that real-time supervision alone may not be practical anymore if they're working from different locations or where it just might not be as effective as it used to be in the office environment.

And then moving on to the supervision of order handling and trading activity, same considerations for broker communications. Firms should consider whether their automated system should be used or whether more manual reviews are appropriate. And this is dependent in part on what type of business the firm is doing, whether it's an IB, CTO or CPA, and what records are being reviewed. But the firms should also consider potentially granting access, direct access to trade systems or platforms as well as potentially communication devices for supervisors to be able to conduct real-time supervision of remote AP activities where possible.

And then the last point here is just maintaining proper documentary evidence of reviews. So as always, it's important that firms are always maintaining written evidence that reviews are being completed so that they can demonstrate that the policies and procedures are being followed, and this would include clear audit trail of any escalation of problematic communications, trades or customer orders handled by APs. So, it's really important that Members are maintaining that audit trail and that documentary evidence, and this may also include, for any real-time supervision, if that's a component of the firm's policies. Typically, we would see this in the form of some sort of attestation that supervisors complete, that way they can evidence that real-time supervision was being conducted in accordance with the policies, and this will also allow supervisors to identify or highlight any problems or concerns that were noted during this real-time supervision, as well as any steps that they took to resolve those issues.

And if there's no questions on that from that, I will turn it back over to Katie to get into the technology and information security considerations.

Katie Clapper: Thanks, Tom. So of course, technology and information security are going to be a focus, especially with remote APs. So, I think speaking from a pure technology standpoint, well, I guess information security too, the use of firm approved, or firm issued equipment, software and applications should be a priority. So, firm approved may be a personal device, or it may be firm-issued equipment. So, a personal PC could potentially be used so long as it's firm-approved, and of course, meets the same cyber security and information security standards of the main office. Members need to make sure that APs do understand very clearly what the approved systems are and that they can only use those. And I think there should be probably an emphasis too on the written and oral communications, as Tom just mentioned. Being able to review those

is critical and so APs need to understand that if they're not allowed to say, use a specific application in the office, that application also wouldn't be permitted at home because firms need to make sure that they're able to meet their record keeping requirements and appropriately supervise those communications.

So again, firms may consider like an attestation either annually or some training to their APs on what those systems are, what equipment can be used, if personal cell phones are prohibited, that should be clear within the policies and the training. It's worth emphasizing again, that we would expect a remote AP to be held to the same cybersecurity standards and procedures as the established business office. So, this may require Members to provide equipment and additional technology to its APs that are working remotely to ensure that if there's certain malware, software or things like that need to be installed, maybe that does mean a firm-issued computer, or maybe it's possible to have systems set up that an AP can use their personal computer, but still have those same standards.

Also, Members should consider what additional training needs to go along with that from a cybersecurity perspective, especially with regards to a remote work environment with really an emphasis on APs ensuring that they're keeping customer and other confidential and proprietary information confidential. And that they're aware of maybe some of the increased risks that do come with working remotely. This would be especially true, of course, in a shared workspace or high-risk jurisdiction, where there is again, the increased risk of maybe a cyber incident or just in a shared workspace with other people around how to keep information confidential, having secure passwords, things of that nature.

Matt Kluchenek: Katie, can you talk a little bit about, just briefly about a scenario. Let's say that you have a firm that has approved the use of the particular app for conducting business on a personal cell phone, or has issued technology, and, for whatever reason, that technology or app is not available, maybe the internet's out in a particular area of an AP. What should the AP do in those circumstances where use of the firm approved, or firm-issued technology is not available?

Katie Clapper: Sure. And I'm glad you asked that because that segues nicely to my last point about business continuity and disaster recovery, it's essentially having a contingency plan, right? We've all had the day where internet doesn't work at home, or we're not getting a phone reception. So, with APs working from remote locations, firms do need to have those backup plans for when a system's down, when the internet's down, or it's weak. So, I think additional testing is probably warranted to make sure, especially if someone's trading, is there equipment, or is the bandwidth of their home internet capable of handling some of the trading platforms, which maybe require a lot more bandwidth than just a home internet provider may allow for? So, doing that testing up front, making sure any latency issues are resolved before permitting the AP to do that kind of activity from home.

Internet backup, I mean, maybe there's a home internet backup. Maybe there is just a contingency plan for saying, okay, if your internet's down, all orders probably should be routed through the main office or branch office or somewhere else, and making sure that APs know what to do if and when they find themselves in a position where the internet's not working or the phone, their personal cell phone is down, and making sure that they are able to do business, but also meet regulatory requirements. Similar, I think concept for planning on phone outages, it's also worth mentioning recording devices. I think if you're someone who needs to record your oral communications, we know that recording outages can happen, but I think firms definitely need to be aware of when those happen and have procedures to identify the issues timely. So, you don't want weeks to go by and say, oops, my phone wasn't recording. You want to make sure that there's some kind of procedure in place to monitor the health of the system to make sure things are recording. If you know someone's on the phone all day and they have three days of new recordings, it's probably a sign that something's amiss. So, I hope that that addresses your question, Matt, and happy to expand, but I think, yeah, overall, with technology, it's really making sure that everyone's aware of what they can use and what they should be using, and that there's backup plans in place. And that, of course, cyber security is in the forefront of everyone's minds, even when working at home. And with that, if there's no more questions there, I can turn it over to Tom to touch on record keeping.

Tom Hart: Thanks, Katie. So, the last section that we'll cover here is just with respect to record keeping, and obviously the firm's written supervisory procedures should have a description of how the firm will ensure that remote APs are creating the required record regulatory records. As Katie kind of touched on this, could include mandating the use of from approved devices or technology that may automatically create the required record, as opposed to relying on APs or remote APs to manually create a record and transmit that to the regular business office. So, I think it's important just that firms are aware of what records are being created at the branch at the remote location and ensuring that APs are properly transmitting that information to the regular business office where it's required to be kept, and also doing this in a timely manner as well.

Also, firms should consider regularly reviewing these records, and the substance of them to ensure that they are complete and accurate. And the firm is in compliance with all work record keeping requirements. So, this could depend on what type of records are being manually created at the remote location and firms were basically reviewing to ensure that remote APs are providing all of their records that they're keeping, or that they're creating that the remote location, and transmitting those all to the main office in a timely manner.

Matt Kluchenek: Tom, is there any expectation timing wise as to when, for example, a remote AP should deliver certain records that he or she has kept to the regular business office?

Tom Hart: Yeah, that's a great question. So, I think if those are not automatically being created or maintained by the main office, I think it will depend on the frequency and scope of the firm's reviews of those records. So obviously some of those records may be subject to periodic reviews if they are written pre-trade communications, the firm may be reviewing those on a monthly basis for any unusual or concerning activities, and so obviously that would be something that would be, I think, a minimum that they would expect them to be transmitted in that timeframe. I would say the sooner, the better to ensure that if the firm is receiving their regulatory requests for those records, that those are readily available at the main office. So, I think the sooner, the better that the firm can receive those and maintain them at the regular business office, but I think it will depend a little bit on what type of records are being created at the remote location and what those records, how frequently those would be the contents of those being reviewed.

Matt Kluchenek: Thanks.

Tom Hart: And I think that really covers everything from recordkeeping. Again, the main point is just to ensure that all regulatory records are being created and transmitted to the regular business office, and that the Member is reviewing those records to ensure that they're accurate and complete. And that they'd meet the requirements of the firm's record keeping procedures, in general. Any other questions on this section, Matt?

Matt Kluchenek: Not on this section, but more generally, and to pivot just a little bit here. So, from a disciplinary perspective, so by my count, I think there's been in 2021 alone, this year alone, 20 or so decisions or complaints, charging violations of 2-9, and others, but 2-9 is core. And is there anything, Katie or Tom, from an enforcement perspective in some of those decisions and or complaints that you want to highlight relevant today? Some of these of course, or a number of them, involve record keeping, some seem to touch on remote considerations or issues, but let me turn it over to each of you and see if there's anything you think worthwhile to comment on.

Katie Clapper: Sure, I can try to address that. I mean, I think with some of them, it's always best, especially with record keeping, if a Member identifies the issue. When it gets to the point, if we're coming in an exam and we're identifying that there's a record keeping issue, we might not look as kindly upon that. So that's where we go back to really making sure, I think, as Tom mentioned, that Members are ensuring that they have the records, that they have procedures to address steps to make sure that those records are being created and exist. So, I think with some of those, Matt, it really, it comes down to an issue, the systemic issue that the firm was maybe unaware of from a record keeping perspective.

Tom Hart: So, to me, so systemics, so there's potentially a pattern, or there's a complete sort of failure to understand what the requirements are.

Katie Clapper: Sure. A failure to understand, or just recognize. There may be partial, like certain things are recorded, but just a whole other group of things are not, from

like, let's say, a written perspective. So, I think it's not just a one-off issue, right. It's a bigger pattern of problems that went unresolved.

Matt Kluchenek: Right. Okay, thanks. So, we have a bunch of questions and maybe we start going through the questions, and again, if anyone else wants to add a question to the queue, feel free, we'll do our best to get through all of them. So, let me start with one, if I can, Katie, I think for you here, some of these are more general, some of them relate specifically to the hybrid environment. So, a question here is if a firm determined that an associated person can work remotely, does that remote location need to be registered as a branch office and have a Series 30 branch manager? So, I know this topic was touched on during the last webinar, but thoughts about that, Katie?

Katie Clapper: Sure. I think the answer is, it depends. So, under the new interpretive notice if an associated person is working from a remote location, with only either that individual or persons from the same household so we're thinking here more like a home office, potential for a flexible workspace, but there's also some criteria that are considered to make sure that that office is excluded from branch office registration. So that would include that the AP is not holding that location out as an office, that they're not meeting with customers or physically handling customer funds at that location and that, again, any CFTC or NFA required records that are created at that location are accessible by the main office. So, in that instance, if that office was not holding itself out meeting with customers or handling customer funds, and they were maintaining the records, they would fall under the exclusion. So, they would not need to be a registered branch and then that individual would not also-would not need to take the Series 30.

Matt Kluchenek: And can I ask you a quick follow-up question on this? And not to put you on the spot here, so what do we talk about holding out, there's a lot of CFTC guidance about what holding out means in certain circumstances, certain contexts, but from NFA's perspective, do you have in mind, Katie, or perhaps Tom, sort of where the dividing line is in terms of what constitutes holding oneself out?

Katie Clapper: I think of it from more of just a kind of common-sense perspective. Are you telling people this is my office, this is my office location? Is it in your email signature, do you have business cards? Are you advertising with that location? Like, to me, that would be kind of stating to the world that this is my branch office. So, if somebody is just operating and if they want to meet a client, they're saying, hey, meet me at this registered branch or the main office, that would be fine.

Matt Kluchenek: Right, right. Okay. Makes sense. All right, let's go to the next question. Do supervision requirements apply only to registered APs or all staff? For example, there may be compliance, legal operations staff working from home a couple of days a week.

Katie Clapper: Sure, I can try to address that one. I think for today's discussion, we were very focused on APs. I think that of course firms need to consider supervision of all employees. That's always going to be relevant when you start talking about

financial statements or other things. There's still a supervision element when you're trying to meet your NFA or CFTC requirements, but specific to today's conversation, our focus was APs,

Matt Kluchenek: And then there is a related question to the prior question, if an employee works remotely 50% of the time at home, for example, should the home address be listed as a branch office? Is there a cutoff or threshold requirement? I think you addressed that, but anything further to add?

Katie Clapper: No, I mean, I think I did. So, there's not a cutoff for the amount of time one is working from that location. It's just so long as you meet those other requirements. So, whether it's one day a week or five days a week, as long as you're not holding yourself out handling the funds, you're okay.

Matt Kluchenek: Right, right. So, another question here, can an AP become a remote location? So presumably an AP's office be deemed to be a remote location, if the AP keeps platform records of trades in its location and not in the main location? So, if the records are kept, for example, the home of the AP.

Tom Hart: Okay. So, my understanding of the question then is that those records are not being accessible or provided to the main office or portable branch offices. I think that would, that's one of the exclusion requirements for excluding an office as a branch office is that any records created at that location are accessible at the main of the branch office. So, I would say if those records are only being maintained at that remote location, then that would qualify for the exclusion from the branch office definition. Katie, I don't know if you have anything to add on that or-

Katie Clapper: No, I think that covers it.

Matt Kluchenek: Right, can't seemingly rely upon it. Another question, when speaking of volume of trading versus volume of review, is there a standard that NFA expects? And I think this is probably in the context of one size doesn't fit all. So, coming up with policies and procedures that are tailored to the size, significance of the organization or the activity.

Tom Hart: Yep. I think that's a good starting point. I think, obviously everybody's going to be different. I think it's going to be partially dependent on the AP as well. As Katie mentioned, when just giving consideration to allowing APs to work remotely, firms should be considering any disciplinary history, customer complaints, things of that nature. And I think that might be also an important component of determining what sample size of either communications or orders or trades that firms want to review for that particular AP. So, I think it could even be dependent upon the specific AP, or the trade desk, in determining what volume of records should be reviewed and what's a reasonable sample size. And I think that also it's important that firms continuously adjust the scope as well if problems are consistently appearing, whether it's with a certain AP, trade desk, certain area of the operations, firms should consider either expanding or increasing the scope of their reviews, whether in frequency or the number of records that are reviewed.

Katie Clapper: Yeah. And to add onto that, I think it's also important to consider the means with which the AP is communicating with customers. If someone's using primarily chat, for example, I would think the review would probably be more focused on that primary mechanism for communicating with customers, versus if they're never on the phone with anyone, why spend, and I'm not saying don't listen to those, I'm just saying, I would focus my attention on where most of the communications take place.

Matt Kluchenek: Got it. Okay. Here's another one. I think this might be an easy one. Are there supervisory expectations for sales and trading managers?

Katie Clapper: So, if I understand that, I guess managers, so like supervising the supervisors, sure. I think there's always a chain, right, of someone who's in the chain of command that's supervising and making sure that supervisors doing their job. So, I think, yes, you would need to consider that. And if a supervisor is working remotely, you would have to consider how that supervisor is able to properly do their job and supervise APs who maybe are in the office or remote themselves.

Matt Kluchenek: And more generally, would it be fair to say that if a supervisor is supervising APs, then clearly there's going to be supervisory obligations, but if a supervisor is supervising a non-AP, such as portfolio traders who are not functioning at all as APs, that there likely would not be any supervisory obligations?

Katie Clapper: So, Matt, by portfolio traders, you mean someone who's just trading, managing a portfolio, right?

Matt Kluchenek: Not APs, right.

Katie Clapper: I mean, I think that there was still probably a trading aspect of that should be considered there, right, to make sure that there's no nefarious trading activities going on. So, I don't know that you can say there's no supervisory obligation, but it would certainly be different than somebody who's soliciting customers.

Matt Kluchenek: Okay. That would just be a defense perspective, right? Next question, we know the answer to this one. Does the NFA consider a failure to supervise violation or finding if there is no underlying failure to comply with regulatory requirements, or would it consider a standalone failure to supervise be sufficient? So, I think from the CFTC perspective, the answer to that question is an underlying violation is not required to find a violation of rule 166.3, but what say NFA?

Katie Clapper: I think the NFA is similar. So, I mean, certainly if there's an underlying violation, it's a little easier to go that route, but, yeah, I think you can feel the supervise without the underlying issue itself.

Matt Kluchenek: Always helps. Another question for those APs registered with an IB, but business activity is infrequent, can equipment applications, et cetera, and the supervision of such be customized and not necessarily baked into firm wide PNP? So, I think this probably gets back to this, risk-based analysis and one size doesn't fit all.

- Tom Hart: Yeah, I can take this. I think that's a fair assumption. I think the nature of supervision and the level of supervision would be dependent, I think maybe even from AP to AP depending on their activities. As Katie, you kind of touched on, what methods they're using to communicate with customers. Maybe certain APs may only use, written communications. Other APs may be more comfortable with speaking over voice communications more frequently. So, I think it can be tailored from AP to AP. Katie, feel free to jump in if you feel differently, but it does sound like just the basis of that question. I think it is probably important in those circumstances, maybe even to tailor your supervision, depending upon the nature of the activities of that particular AP.
- Matt Kluchenek: And here's a follow-up question based on the discussion during the slides, there was a reference to heightened jurisdictions in terms of operating remotely. And the question regards, is that principally, certain non-US jurisdictions. Anything you can say in general as to what might constitute a heightened jurisdiction?
- Katie Clapper: Yeah, sure. No. I think in here we are referring to high-risk jurisdictions from a cybersecurity perspective, and yes, I would think those would be non-US locations, namely those where there's more cyber risks, so higher risk of breach, more cyber-attacks in general, is really what we're referring to there, which would be non-US jurisdictions.
- Matt Kluchenek: Do privacy laws enter that equation if the remote location is in a jurisdiction with relatively strict privacy laws?
- Katie Clapper: I think if the privacy laws come to a point where they're impacting the main office of the Member's ability to supervise and get documentation and records, certainly they could come into play.
- Matt Kluchenek: Sure. And by the way, just to let everybody know, we have some questions as to whether or not the recording will be made available later in the slide deck made available later. The answer is yes. These materials, if you will, will be available later. Another question here, are there geographic limitations as to how far away a remote employee or environment can be from the supervising branch office or home office? So, any sort of geographical limitations?
- Katie Clapper: No, not prescriptive, no. I think that, again, a firm needs to make sure that they can easily access any records. So, to the extent there's written records or things like that, I suppose they could be scanned. I think that a Member would still in the course of an exam, if we needed to talk to somebody, have to make that individual accessible to NFA staff. So, I think things like that just need to be considered, but I think if you can fully mitigate the risk and you're comfortable with that, I don't think we're putting a prescriptive limit on a distance.
- Matt Kluchenek: Right. So as long as you can fulfill your supervisory responsibilities, it doesn't matter where the location is based, correct?
- Katie Clapper: Right, you can fulfill your supervisory responsibilities and mitigate any foreseen risks.
- Matt Kluchenek: And another question, if a location branch office location was previously registered as such prior to the amendment to the definition of branch office, but

now the branch office meets the requirements of the amended definition, you can delist, drop the branch office designation, right?

Katie Clapper: Correct. Yes.

Matt Kluchenek: That was an easy one. This one's a little bit more complex. How does one go about supervising a one-person home office that has no onsite inspection requirements and be able to detect issues that would have been found if onsite? So basically, issues around a one-person office, which is a whole different ball of wax, right? And Tom, when you're conducting examinations at a one-person office, just at a high level, any general thoughts you have? I mean, they're between remote and home office kind of goes away.

Tom Hart: Okay. So, is this just referring to like a one-person shop or it's just one principle? Okay. Yeah. So, if it's just a one-person shop, I think a lot of this, it's a little bit different considering that if there's just one individual conducting all the activities, how do you supervise yourself? So, I think when we get into one-man shops, the supervisory aspect may go away a little bit, and maybe there might be many different considerations, but I think that it's kind of a unique situation where there's no other APs for that person to supervise. They kind of are their own boss.

Matt Kluchenek: Great. Thanks, Tom. Another question. Good question here. So, with respect to reviews of a remote office, are there any requirements or expectations as to whether or not those reviews are conducted onsite or remotely?

Katie Clapper: Sure. I can address this. So, I think if we're talking about a remote office that's not registered, I think the inspection, the annual inspection requirement comes with a registered branch office. So, I think at that point, that's not on the table because it's not a registered branch. I mean, again, we've been talking about remote supervision all day, so of course there's still that expectation, but it's not the annual inspection process.

Matt Kluchenek: Thanks, Katie. We have a question too regarding, looks like NFA's plans with respect to doing physical onsite audits in 2022.

Tom Hart: Yep. I think I can answer that. So obviously there've been some recent developments with the Omicron variant, and I think that put a wrench in our plans a little bit. I think our goal was to at least begin in certain circumstances conducting onsite exams in the beginning of 2022. I think with the developments with a new variant, we've kind of put those plans on hold a little bit. So, I wouldn't expect in January that we would begin any onsite exams as we previously planned but depending on how the developments with the new variant go, I think our goal is to begin on-site exams in early 2022, where possible. I think in all circumstances, that would entail a discussion with between the exam team and the Member firms in order to gain an understanding about where employees are working, whether they've begun to allow employees to take advantage-or APs to take advantage of the new remote work flexibility, whether employees are more generally working from home or in a hybrid

environment would even be available, all in one place at the main office or a branch office for us to visit.

And we would obviously, I think have, give consideration to any concerns firms may have, with respect to allowing NFA staff in the office environment and what restrictions there might be depending upon where those offices are located. So, I think that the short answer is that we're hoping to begin on-site exams in early 2022, but at this point, those plans are on hold for a little bit with the development of the new variant.

Matt Kluchenek: Okay. Makes sense. Thank you. So, couple more questions remaining. Can branch office managers supervise persons in a branch office in a different location, but geographically close by? That makes sense, I follow.

Katie Clapper: So, if I'm reading and understanding this correctly, it sounds like there'd be two different branch offices. So, these would be two different registered branches, even though they're close by and I think each branch need a registered branch office manager. Now, can that be the same person? Tom, I don't know if you have any input on that. I don't know that I've seen that, but-

Tom Hart: Yeah, I personally have never seen that. I think part of the benefit of having a branch manager is that you have identified somebody who's physically onsite and can conduct real-time oversight of the APs at that location and I think that may be difficult obviously if there's two different buildings, different locations that that branch manager's trying to supervise. I guess, it's possible if those branches are in kind of like a hybrid work environment where maybe certain, one office is in two days a week, the other office is in three days a week. I think then the firm would still have consideration within its procedures of how it would supervise those APs when they are working remotely and not physically at that branch office, if that makes sense, but personally I've never seen, I guess, one branch office manager for two different branches.

Matt Kluchenek: Okay. So going to be a wrap for today's webinar. Big, big thanks to Katie Clapper and Tom Hart of NFA. Great job. There are a few questions we've not responded to, but we will do our best to get out responses to each and every question. Again, as a reminder, the recording written transcript of today's webinar will be available on NFA's website in the coming days. And to everyone, thanks very much. Happy holidays and look forward to seeing you again. Bye-bye.