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July 29, 2022

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1091

Re: FINRA Proposal to Adopt  
Supplementary Material .19 under  
FINRA Rule 3110 (Supervision);  
File No. SR 2022-19

Dear Ms. Countryman:

The Investment Company Institute<sup>1</sup> is writing to express our support for FINRA's proposal to adopt Supplementary Material .19 under its supervision rule, Rule 3110.<sup>2</sup> Adoption of this Supplementary Material would result in FINRA classifying some private residences, subject to specified conditions, from branch offices to non-branch locations. The specified conditions are intended to ensure that the FINRA member continues to abide by all applicable regulatory requirements while conducting business through the non-branch location.

The Institute is pleased that FINRA is reforming its rules relating to supervising the locations from which its members conduct the business of broker-dealer. While these reforms have, in part, resulted from broker-dealers having to conduct operations at remote locations due to the pandemic, we believe they are an important step in accommodating how members' business operations are evolving in light of external factors and investors' expectations.

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<sup>1</sup> The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Its members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States.

<sup>2</sup> See *Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)*, SEC Release No. 34-95379, File No. SR 2022-019 (July 27, 2022).

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The Institute has long been interested in FINRA reforming its classification of locations from which members conduct business and the supervision of such locations. Our interest in this issue derives from the fact that we represent those FINRA members that serve as principal underwriters for mutual funds.

The business of a mutual fund underwriter is very different from that of FINRA's members that deal with retail investors. Mutual fund underwriters promote the sale of fund shares and products<sup>3</sup> by retail broker-dealers and other financial intermediaries through the use of wholesalers<sup>4</sup> who are registered associated persons of the underwriter. These wholesalers do not interact with retail investors.<sup>5</sup> Instead, their role is two-fold: (1) to educate broker-dealers and financial intermediaries about the funds they represent and encourage them to offer and sell those funds to investors; and (2) to supervise a sales team of associated persons who report to them who engage in similar wholesaling activities. While wholesalers may work out of their homes, due to the nature of their work, they tend to conduct many of their activities, including their supervisory activities, outside of their homes as they travel to meet with their associated persons or financial intermediaries.<sup>6</sup>

The supervisory activities that may be conducted in the homes of these wholesalers generally consist of: (1) phone calls and emails (on the underwriter's systems) between the wholesaler, the underwriter, associated persons who report to the wholesaler, and financial intermediaries relating to the underwriters' distribution efforts; (2) completing and approving associated persons' travel and expense reports; (3) providing materials to, strategizing with, and coaching their associated persons; (4) preparing reports regarding the efforts of the wholesaler and the associated persons they supervise; and (5) similar activities involving overseeing the

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<sup>3</sup> These other investment products might include, for example, 529 plans or separate accounts. The activities occurring at the primary residences of the regional distributors and wholesalers are limited to those described in this letter regardless of the investment product they wholesale.

<sup>4</sup> These wholesalers are responsible for supervising the conduct of the underwriter's regional distributors. This memo uses the term "wholesaler" generically – some principal underwriters use other terms, such as regional managers or divisional directors, to describe the persons who engage in these activities.

<sup>5</sup> We understand that the one instance in which a wholesaler may meet with retail investors is when making a joint presentation with representatives of a retail broker-dealer at a seminar organized by the retail broker-dealer for its clients. None of these sessions would occur at the regional distributor's or wholesaler's home; nor would they involve the wholesaler selling any securities to a retail investor.

<sup>6</sup> Consistent with the personal residence exclusion in Rule 3110(f)(2)(A): there is only one associated person at the wholesaler's residence; the location is not held out to the public and customers do not meet at the residence; no customer funds or securities are held at the residence; the wholesaler is assigned to a designated branch office, which is reflected on the wholesaler's business cards and correspondence; all such correspondence is subject to the underwriter's supervision; all of the wholesaler's emails are sent through the underwriter's systems; there are no orders entered by the wholesalers; and the underwriter maintains written supervisory procedures governing the residence and a list of all wholesaler's residence locations.

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wholesalers' associated persons. Most, if not all, of these activities could take place (and often do) at any location such as a in a hotel room, a car, or a plane.

As such, none of the customer protection concerns FINRA seeks to address by requiring any location where supervisory activities occur to register as a branch office would appear to be present with wholesalers' residences. This is why we have long advocated that FINRA treat these locations as non-branch offices. We appreciate FINRA's current proposal to reform the classification of certain offices as non-branch locations.

We commend FINRA for continuing to review its rules to ensure that they keep pace with the changes in the environment within which broker-dealers operate while ensuring the protection of investors. We are pleased that, as part of this ongoing review, FINRA has determined that classifying some private residences as non-branch locations, subject to specified controls, will accommodate members' business locations without diminishing the important investor protections afforded by FINRA's rules. We support the revisions FINRA has proposed to Interpretative Material .19 under Rule 3100 to reclassify certain locations from which broker-dealers' operate as non-branch locations.

Regards,

/S/

Tamara K. Salmon  
Associate General Counsel