



**FINANCIAL
SERVICES
INSTITUTE**

VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

August 23, 2022

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: SR-FINRA-2022-019: Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision)

Dear Secretary:

On July 15, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to establish the Residential Supervisory Location classification for private residences where lower risk activities are conducted.¹ A Residential Supervisory Location, meeting the criteria outlined in the rule, would enable firms to use this designation instead of registering a private residence as a branch office or an Office of Supervisory Jurisdiction (“OSJ”) when an associated person is working from home. FINRA explained that it is proposing the Residential Supervisory Location based on changes in work structure (e.g., hybrid work location models and work from home), which accelerated during the last two years after the onset of the Covid pandemic. As a result of the pandemic, FINRA initially issued temporary relief to address certain regulatory requirements affected by the necessary shift to remote work and, more recently, has reviewed aspects of Rule 3110 that may benefit from modernization.

We appreciate FINRA’s review of its rules with an eye toward modernizing them to align with the way industry professionals now work. With advances in technology, centralized record keeping electronic systems, and significant changes in lifestyles and work habits, industry professionals have been effectively performing their work remotely during the pandemic and, in many cases, expect to continue working from home on at least a partial basis. We agree with FINRA’s assessment that a decentralized, flexible, hybrid work model will likely endure, even as pandemic concerns moderate.

On August 2, 2022, the SEC published this proposed rule change in the Federal Register for public comment. The Financial Services Institute² (FSI) appreciates the opportunity to comment

¹ Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision), available at <https://www.federalregister.gov/documents/2022/08/02/2022-16487/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has

on this important issue. We support the adoption of Residential Supervisory Locations and offer targeted comments aimed at ensuring that the proposed rule aligns with FINRA's intended purpose; to modernize this rule to fit the way industry professionals now work while ensuring investor protection is preserved. In particular, our comments focus on two areas of the proposed rule: 1) encouraging review of the term "immediate family" as used in the condition that only one associated person, unless in the same immediate family, reside at the location designated as the Residential Supervisory Location (.19(a)(1)); and 2) the ineligible location criteria precluding designation as a Residential Supervisory Location where a designated supervisor has less than one year of direct supervisory experience with the member. (.19(b)(4)).

Background on FSI Members

FSI is an advocacy association comprised of members from the independent financial services industry. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers ("IBD").⁴ FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.⁵

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to provide comments in response to FINRA's proposed rule. Given FSI members' business model, our members have generally operated in a decentralized structure, with advisors serving clients in the communities where they live across the country, including rural America. The main office, commonly referred to as the home office, performs the firms' supervisory functions. For certain members, the home office serves as the only OSJ. Other members

been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ Cerulli Associates, Advisor Headcount 2016, on file with author.

⁴ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the Securities and Exchange Commission (SEC) or state securities division as an investment adviser.

⁵ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

have additional OSJs (sometimes referred to as field OSJs) that perform certain supervisory functions, while still overseen by the home office, which, in most cases, still performs the bulk of the supervisory responsibilities. IBD firms transitioned with relative ease to working and supervising registered representatives in the more decentralized, remote work environment that was necessary during the pandemic. We appreciate that FINRA has solicited feedback and analyzed lessons-learned from the pandemic and now brings that information to bear in proposing this new rule.

FINRA is proposing to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA's definition of an OSJ and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safe guards and limitations. As outlined by FINRA, the most significant regulatory effect of this proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than the annual inspection requirement for OSJs and other supervisory branch offices.

FSI supports the adoption of the Residential Supervisory Location classification. As noted above, we would like to comment on two specific aspects of the proposed rule. Finally, we highlight some additional areas for consideration.

I. Immediate Family Member Criteria

A person's private residence, where supervisory activities are conducted, can be considered a Residential Supervisory Location if it meets ten specific criteria. The first of these criteria is that:

[O]nly one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location.

While FSI recognizes that FINRA is building off the established conditions to exclude a residence from requiring registration as a branch office (Rule 3110(f)(2)(A)), in the interest of modernizing the criteria for a Residential Supervisory Location, FSI suggests revisiting this requirement. With increasing living costs, many find it difficult to find affordable housing without roommates. Practically, many roommates first connect through work, given that they may have similar housing criteria in terms of location and maintain similar schedules. In addition, many couples may reside together without being married or designated as domestic partners. FINRA should review this term to ensure that it is not overly restrictive and consider whether an alternative criterion may address these specific concerns to ensure that it is clear, provides sufficient flexibility, and does not unintentionally restrict the variety of living arrangements that people establish to best suit their financial needs and desired lifestyle.⁶

⁶ We recognize that FINRA has sought to be inclusive in the use of this term in other parts of its rulebook. See e.g. FINRA Rule 3241(c) (defining "immediate family" to mean parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent. The term includes step and adoptive relationships. FINRA interprets cousin in the "immediate family" definition to mean first cousins and not second or more distant cousins.).

II. Ineligible Locations: One Year of Supervisory Experience with the Member

In addition to the ten criteria required to qualify as a Residential Supervisory Location, FINRA proposes certain conditions that would make a location ineligible for this designation. One proposed disqualifying condition is that “one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member.” (.19(b)(4)). While FSI recognizes this requirement is aimed at ensuring that the Residential Supervisory Location is low risk, this approach discounts experienced supervisory personnel who may switch firms or those associated persons who are stand-outs at a firm resulting in promotion to a supervisory role. In both cases, appropriate training on firm operations and supervisory responsibilities more reasonably addresses these regulatory concerns without creating barriers to hiring and retaining talent.

In modernizing this rule, FINRA seeks to recognize the shift in work force dynamics and practices. During the last few years, hiring and training personnel remotely has become a normal practice. The workforce, especially experienced and attractive candidates, expect work location flexibility from the onset of a new role and this proposed criterion would place an unnecessary impediment on firms to hire and retain talent in a competitive job market. Furthermore, it seems impractical to register a residence as an OSJ, for example, for a year’s time, solely based on this criterion, knowing that it will shift it to a Residential Supervisory Location.

An alternative approach, and one that is already a consideration for most firms in planning inspections, is to provide discretion to firms to consider new hires or promoted supervisors among the risk factors in planning their inspections.⁷ For example, in outlining inspection plans, IBD firms already frequently seek to visit new hires or locations earlier in the firm’s inspection cycle. Removing the bright-line one year time requirement for a more risk-based, flexible approach will address the concerns noted above while preserving the objective of investor protection and rule modernization.

III. Other Considerations

Privacy Issues: FSI encourages FINRA to remain cautious to protect the privacy of residential locations (whether full or partial address) in publicly available search engines, such as BrokerCheck. Given the nature of the activities occurring at a Residential Supervisory Location, privacy concerns with the publication of location information outweighs any investor protection benefit of including these locations in BrokerCheck. Understanding FINRA’s need to know the location of a Residential Supervisory Location, FSI suggests that any address information should be available for regulatory use only.

Remote Inspections Pilot Program Proposal: While FSI will comment separately on FINRA’s Remote Inspections Pilot Program rule proposal, FSI supports that the pilot program will enable firms to maintain flexibility to use remote inspections, as appropriate. The Remote Inspections Pilot Program compliments this proposal in modernizing FINRA rules to reflect the low risk profile of certain locations (such as those that qualify as a Residential Supervisory Location), which a firm may deem suitable for remote inspection.

⁷ Alternatively, FINRA could consider including in the rule or related guidance that a reasonable approach would be to inspect the location within a year’s time.

Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with the SEC and FINRA on this and other regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at [REDACTED]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel