



655 W. Broadway, Suite 1200
San Diego, California 92101
TOLL-FREE: 866.489.3100
www.cetera.com

August 23, 2022

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-FINRA-2022-019 and Release No. 34-95379: Proposed Rule Change to Adopt Supplementary Material Under FINRA Rule 3110

Dear Ms. Countryman:

This will serve as comments of Cetera Financial Group (“Cetera”) with respect to a rule change proposed by the Financial Industry Regulatory Authority Inc. (“FINRA”). The proposed rule change would adopt Supplementary Material under FINRA Rule 3110, and would revise the method for classifying certain branch locations of FINRA member firms. We will refer to the proposed changes in the Supplementary Material as the “Proposal”.

Cetera is the corporate parent of five FINRA member firms with nearly 9,000 registered representatives doing business in all fifty states. The majority of our branch locations house less than five registered individuals, and we maintain a large number of registered branch offices as a result. Since our offices are generally small and geographically dispersed, our supervisory staff operates from many different locations.

Largely as a result of the COVID-19 pandemic, the majority of our supervisory staff now work in remote locations, primarily their personal residences. This is particularly significant for Cetera and firms similarly situated because under the existing FINRA rule, any location at which specified supervisory activities takes place is deemed an Office of Supervisory Jurisdiction (“OSJ”), and subject to a physical inspection at least once per year. Without adoption of the Proposal, a large number of residential locations from which employees of FINRA member firms perform their work will become subject to the annual inspection requirement. This will result in a large amount of effort and expense for FINRA member firms without any corresponding benefit to investors.

The COVID-19 pandemic wrought havoc on both individuals and the economies of virtually every nation on earth, but it did produce at least one tangible benefit: It demonstrated that many businesses, particularly broker-dealers, can operate effectively and efficiently with their employees working from multiple remote locations. No one would have chosen a pandemic as a means to validate this concept, but the securities industry, and, we believe, most regulatory agencies learned that physical presence is not as necessary to effective supervision as many would have previously believed. Indeed, given the evolution of technology, systems, and processes utilized by broker-dealers, supervision of securities-related activity can often be conducted more effectively through electronic oversight than through physical presence.

Under current FINRA rules, physical locations in which specified supervisory tasks are performed are deemed OSJs, and thus subject to physical inspection at least once per year. Automatically classifying office locations where supervisory activities take place as OSJs probably made sense when Rule 3110 and its predecessors were adopted, but given advances in technology and how broker-dealers utilize it in performing supervisory functions, deeming a location an OSJ solely because supervisory activities are performed by individuals working in it is no longer necessary or appropriate. Particularly for firms such as Cetera, the vast majority of supervisory activity is conducted through electronic systems, and most supervisors work from locations (often their personal residences) that would not otherwise be deemed OSJs. The current classification regime creates burdens for FINRA member firms that do not result in any measurable enhancement to investor protection. The Proposal appropriately seeks to modernize the applicable rules.

The COVID-19 pandemic has not just helped to establish that many business activities can be performed remotely, it has also led to a much greater willingness on the part of employers to allow employees to work from remote locations. It has also increased demands from workers that they be permitted to work remotely. The latter trend has become prevalent in the United States, to the point that many workers have migrated to employers that will allow them to work remotely, and it appears likely that this trend will persist for some time. Broker-dealers must compete with other employers to hire the highly trained and qualified staff necessary to perform supervisory tasks. The current version of Rule 3110 which designates locations at which supervisory functions are performed as OSJs and requires annual physical inspections creates an obstacle to hiring and retention of qualified supervisory staff who wish to work remotely. Given the advances in supervisory oversight driven by technology, this obstacle is not justified by any incremental increase in investor protection.

We note that The Securities Industry and Financial Markets Association (“SIFMA”) has submitted written comments regarding the Proposal in a letter dated August 23, 2022. We endorse the views expressed by SIFMA and strongly support adoption of the Proposal. We also offer the following as additional suggestions:

1. FINRA has recently made another rule proposal that would amend FINRA Rule 3110.18¹. FINRA rules currently require member firms to perform physical inspections of all OSJ locations once per year, and all non-OSJ branch locations no less frequently than every three years. The proposal to amend Rule 3110.18 would establish a pilot program under which

¹ File No. SR-FINRA-2022-021, 87 Fed. Reg. 50144 (Aug. 15, 2022).

FINRA member firms could elect to vary from the strict one-year/three-year requirement if certain conditions are met. Cetera will submit written comments in connection with that proposal, but we strongly believe that these proposed amendments are so closely related that they should be considered and adopted together.

2. The Proposal includes a condition which specifies that if supervisory functions are performed in a physical location by an individual who has less than one year of experience with the firm in a supervisory role, that location would be ineligible to rely on the provisions of Rule 3110.19 and therefore classified as an OSJ². This strikes us as arbitrary and not likely to produce any increase in investor protection. For example, an individual supervisor may have many years of experience performing supervisory tasks at another FINRA member firm or in a related industry, or may have worked for the current FINRA member for many years in a different or related role. Applying this one-year limitation is arbitrary and appears to be based on assumptions that cannot be objectively verified. This condition should be removed from the Proposal.

Thank you for the opportunity to submit these comments. If you have questions or we may offer any further information, please let me know.

Sincerely,



Mark Quinn
Director of Regulatory Affairs
Cetera Financial Group

² Proposed FINRA Rule 3110.19(b)(4).