



Wells Fargo & Company
420 Montgomery Street
San Francisco, California

August 23, 2022

Submitted Electronically

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2022-019, Proposed Rule Change to Adopt Supplementary Material .19
(Residential Supervisory Location) Under FINRA Rule 3110 (Supervision)

Dear Ms. Countryman:

Wells Fargo & Company¹, together with its affiliates and subsidiaries (collectively, “Wells Fargo”), welcomes the opportunity to comment in support of FINRA’s filing of SR-FINRA-2022-019 (“the Notice”) with the U.S. Securities and Exchange Commission (SEC). Our comments and policy recommendations are from the perspective of our Wealth & Investment Management (WIM) division² and our Corporate and Investment Banking (CIB) division.³

I. Background and rationale for Wells Fargo’s support for the Residential Supervisory Location proposal.

The onset of the COVID-19 pandemic necessitated a rapid transition to an exclusively remote work environment for many of our employees, including those associated with our broker-dealers. Wells Fargo appreciates the fact

¹ Wells Fargo (NYSE: WFC) is a leading financial services company that has approximately \$1.9 trillion in assets. It proudly serves one in three U.S. households and more than 10% of small businesses in the U.S., and is a leading middle-market banking provider in the U.S. In the communities we serve, the company focuses its social impact on building a sustainable, inclusive future for all by supporting housing affordability, small business growth, financial health, and a low-carbon economy.

² Wells Fargo Wealth & Investment Management (WIM) is a division within Wells Fargo & Company. WIM provides financial products and services through various bank and brokerage affiliates of Wells Fargo & Company and is one of the largest wealth managers in the U.S., with more than \$1.8 trillion in client assets. WIM provides personalized wealth management, brokerage, financial planning, lending, private banking, trust, and fiduciary products and services to affluent, high-net worth, and ultra-high-net worth clients. WIM operates through advisors in Wells Fargo Advisors, independent brokerage offices, and digitally through Intuitive Investor® and WellsTrade®, as well as through advisors in The Private Bank and other banking centers.

³ Wells Fargo Corporate & Investment Banking (CIB) is a division within Wells Fargo & Company. CIB delivers a suite of capital markets, banking and financial products and services to corporate, commercial real estate, government and institutional clients globally. Products and services include corporate banking, investment banking, treasury management, commercial real estate lending and servicing, equity and fixed income solutions, as well as sales, trading, and research capabilities.

that regulators offered and extended pandemic-related relief to broker-dealers across a variety of topics, including related to branch office registration. The engagement between broker-dealers and regulators throughout the pandemic has been tremendously productive. Moving forward, after the adoption of the Notice, Wells Fargo encourages further discussion focused on modernization of regulations to reflect the changing nature of work and advances in technology available to broker-dealers to fulfill surveillance, supervisory, and other regulatory obligations.

We support the Residential Supervisory Location proposal as it recognizes that, due to advances in technology, effective supervision can occur regardless of location. Wells Fargo shifted to a hybrid workforce model in which many employees regularly work from their homes and Wells Fargo offices. The proposal's risk-based approach, especially if the recommendations offered below are adopted, would avoid the negative outcome of requiring Wells Fargo to register and inspect many private residences every year. Through the experience of the pandemic, the industry has demonstrated that effective supervision can be done remotely, without annual inspections and without sacrificing investor protection.

Importantly, as regulators consider the final form of the Residential Supervisory Location Proposal, Wells Fargo supports an extension of the existing relief from location registration obligations. This will give firms and employees sufficient time to prepare for the termination of the pandemic relief and the compliance date of any final Residential Supervisory Location rule.

II. The proposed exclusion for supervisors with less than one year of experience should be reconsidered.

Wells Fargo believes the experience operating during the ongoing COVID-19 pandemic, the success of the temporary regulatory relief, and the ability of firms to continue to meet their regulatory obligations under these extraordinary circumstances highlighted firms' ability to adopt policies, procedures, and controls to support remote working conditions while safeguarding investor protection and the health and safety of employees. Consequently, we once again voice our support for continuing to align the regulatory framework to new workplace norms,⁴ and specifically support and encourage the adoption of the relief contained in the Notice.

The proposed "Residential Supervisory Location" definition in the Notice is an improvement to the existing office classifications, and better aligns the regulatory framework to current workplace realities. We believe the associated ineligibility provisions for qualification as a non-branch location, however, are unnecessarily prescriptive and duplicative of Supplementary Material .12 under FINRA Rule 3110, which sets forth the risk-based factors that must be considered by members in connection with establishing and maintaining their supervisory procedures.

We recommend the removal of the proposed ineligibility provision of Supplementary Material .19(b)(4) under Rule 3110, which would disqualify a private residence as a non-branch location if an associated person who is

⁴ See Wells Fargo Comment on SR-FINRA-2020-019 (July 28, 2020), [srfinra2020019-7488699-221390.pdf \(sec.gov\)](https://www.finra.org/sites/default/files/NoticeComment/Wells%20Fargo%20Advisors%20%5BJames%20T.%20McHale%5D%20-%20FINRA%2020-42%20Comment%20letter%20-%20WFA.pdf); and Comment on FINRA Regulatory Notice 20-42 (February 16, 2021), <https://www.finra.org/sites/default/files/NoticeComment/Wells%20Fargo%20Advisors%20%5BJames%20T.%20McHale%5D%20-%20FINRA%2020-42%20Comment%20letter%20-%20WFA.pdf>.

designated as a supervisor at the location “has less than one year of direct supervisory experience with the member.”

Proposed Supplementary Material .19(b)(4) under Rule 3110 is overly broad and would exclude the following persons: (i) experienced supervisors transferring between affiliated broker-dealers (ii) associated persons who are longstanding employees with extensive experience who may have recently been designated as a supervisor, and (iii) newly hired individuals from otherwise qualifying for a residential supervisory location even though they may have years of supervisory experience at another FINRA member. Although we understand the concerns with inexperienced supervisors acclimating to a new firm with new products or systems, given the current technology available, the location from which such a supervisor performs their supervisory responsibilities in and of itself does not introduce material risk to the supervisor’s ability to perform effective supervision. As such, we recommend the exclusion be eliminated given the existing supervisory obligations under FINRA Rule 3110.

Further, firms have been operating under FINRA temporary Supplemental Material .17 under Rule 3110 since 2020, permitting member firms to conduct remote inspections. FINRA has not identified a material increase in issues relative to pre-pandemic findings during its recent examinations of member firms.⁵ Additionally, the Notice doesn’t provide evidence of relevant supervisor deficiencies owing to inexperience with the particular member firm. Instead, consistent with the Notice’s risk-based approach, members should be permitted to evaluate whether a particular supervisor should be able to take advantage of proposed Supplementary Material .19 under Rule 3110.

III. The Notice’s exclusions for investment banking and market making functions are inconsistent with the proposal’s risk-based approach.

The proposed definition of a “Residential Supervisory Location” is a location that is the associated person’s private residence where limited supervisory activities are conducted, “including those described in Rule 3110(f)(1)(D) through (G).” Limiting the permitted activities to the functions listed in subparts (D) through (G) is inconsistent with the Notice’s risk-based approach.⁶ Wells Fargo supports expanding that definition to include the functions, not just the supervision of the functions from the residence, in Rule 3110(f)(1)(A) “order execution or market making” and Rule 3110(f)(1)(B) “structuring of public offerings or private placements.”

Excluding these functions (by reference to the current “Office of Supervisory Jurisdiction” definition) from the permitted activities of a Residential Supervisory Location disadvantages investment banking businesses without a risk-based justification. Individuals engaged in these functions should be permitted to continue to benefit from workplace flexibility.

Wells Fargo views order execution and market making as appropriate for inclusion in the definition of Residential Supervisory Location, especially because the functions can be supervised remotely and, therefore, should be subject to inspection less frequently than annually. The supervision of order execution and market making is effectively monitored and controlled through numerous technologies such as surveillance and compliance tools. These risk-based tools and systems are the same safeguards that supervisory personnel use both at on-site offices and at private residences. The securities industry has evolved with the use of web-based platforms and now

⁵ Financial Industry Regulatory Authority Notice of Filing of a Proposed Rule Change to Adopt Supplemental Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110, 87 Fed. Reg. 50153 (August 15, 2022).

⁶ Wells Fargo agrees that the function in Rule 3110(f)(1)(C) “maintaining custody of customers’ funds or securities” does not meet the risk-based criteria of the proposed rule and should be excluded.

uses these platforms to communicate with registered representatives and to supervise investment banking activity remotely at locations across the country.

With respect to the investment banking functions described in Rule 3110(f)(1)(B), the information barriers and other controls that are necessary when structuring public offerings and private placements remain the same whether in an office setting or a residential setting. The supervisory responsibilities do not change and are conducted in the same manner, using the same types of information barriers in all situations. The high standards that firms must observe regarding supervisory obligations are already established for all locations, including remote locations, without compromising the supervisory system. Wells Fargo has information barriers to safeguard and restrict the flow of confidential information and material non-public information. The physical information barrier that segregates firm personnel when working in separate office spaces still exists when they are working from a residential location. In fact, firm personnel have more physical distance in this scenario. Additionally, the technology information barriers that restrict and control personnel access to systems and databases are still in place for personnel when working from a residential location. Other controls, such as internal email blocks work regardless of the physical location of the firm personnel.

Accordingly, we recommend including subparts (A) and (B) of Rule 3110(f)(1) to the functions that may be performed at a Residential Supervisory Location.

IV. Wells Fargo looks forward to continuing a productive dialogue with regulators focused on further modernization of the Office of Supervisory Jurisdiction and branch office definitions.

We remain committed to discussing modernization of the definitions of “branch office” and “office of supervisory jurisdiction” (“OSJ”) contained in Rule 3110(f) to reflect today’s workplace, as set forth in our prior comment letters pertaining to COVID-19 pandemic relief and below.⁷

The COVID-19 pandemic forced financial services personnel to work from a variety of locations that do not necessarily meet the current definitions of “branch office” and OSJ. These modified workplace arrangements have highlighted how firms have integrated new technologies that support more advanced supervisory capabilities. The pandemic environment has demonstrated that virtually all the tasks at a financial services firm can be done by employees working remotely without on-site supervision if a firm has adopted appropriate protocols to supervise such activity. In the past, it may have been the case that many activities required a physical presence to be supervised appropriately. However, the pandemic experience has demonstrated that this is no longer the case.

Wells Fargo supports continuing the regulatory modernization efforts to better align the rules and regulations that determine the designation of work locations with evolving technological and business realities. Given new workplace dynamics and the technologies available to broker-dealers to perform effective supervision, locations that can be supervised remotely should not be required to be registered as an OSJ or a branch office where the associated person does not meet with customers in person or custody customer assets or physically handle customer funds.

Conclusion

Wells Fargo appreciates the efforts of FINRA and the SEC throughout the COVID-19 pandemic. The federal regulatory engagement and response supported our ability to serve our customers and keep our employees safe.

⁷ See note 4.

This proposal represents a productive and welcome step forward for broker-dealers, and we encourage the SEC to approve the Notice, with our suggested revisions.

We appreciate the opportunity to share our feedback on the Notice. If you would like to discuss these items further or need additional information, please contact John Vahey, Wells Fargo Public Policy, at

Sincerely,

Jim McHale
Executive Vice President
Head of WIM Compliance

Robert Mulligan
Executive Vice President
Global Head of CIB Compliance