



August 23, 2022

VIA ELECTRONIC DELIVERY

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

RE: ***Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision); File No. SR-FINRA-2022-019; Release No. 34-95379***

Dear Ms. Countryman:

Virtu Financial, Inc.¹ (“Virtu”) respectfully submits this letter in response to the above-referenced rule proposal filed by the Financial Industry Regulatory Authority Inc. (“FINRA”) with the Securities and Exchange Commission (the “SEC” or “Commission”) to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (the “Proposal”).² The Proposal would align the existing FINRA supervision rule with the current business environment that was significantly and permanently altered by the COVID-19 pandemic resulting in many employees working from home or in a hybrid structure instead of physically reporting to their firm’s business office location each and every day. Specifically, the Proposal would enable firms to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location.

Virtu commends FINRA for seeking to modernize the supervision rule. However, we believe that FINRA should go further and reconsider the notion of branch offices as being physical locations, and that FINRA should make clear that all firm locations where all covered activities are conducted electronically and can be centrally and remotely supervised also should be treated as non-branch locations.

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants.

² FINRA, *Proposed Rule Change to Adopt Supplementary Material. 19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)*, File No. SR-FINRA-2022-019, 87 Fed. Reg. 47248 (Aug. 2, 2022), <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-019>.

FINRA’s existing definitions of “office of supervisory jurisdiction”³ and “branch office”⁴ were adopted in an era where most business activities were conducted in physical office locations incapable of centralized, remote supervision and fail to account for the electronic age that now governs our business world. Today, the vast majority of activities covered by these definitions – from new account onboarding to investment banking, from market making to order execution, among other activities – can all be handled electronically and can be remotely and centrally supervised. The physical location of the associated person engaging these activities should not make a difference when those activities are accomplished electronically through centralized systems that can be supervised from anywhere. Similarly, we believe that the requirement to conduct physical inspections on a regular periodic schedule under Rule 3110(c)(1)(C) (which would be every three years under the Proposal) is not needed and fails to recognize today’s technology-dominated marketplace.

As such, we respectfully request that the SEC and FINRA codify that all personal residences where only electronic activities are carried out, whether those be supervisory or other securities related activities, are non-branch locations and reconsider the need to conduct any physical inspections of an associated person’s residence and instead rely on technological monitoring tools and electronic recordkeeping. Of course, we recognize that where an office is held out to the public as being available for conducting business in person, where checks or other monetary instruments are accepted for deposit, where securities certificates are accepted for deposit, and other similar activities occur, the location would need to be registered as a “branch office” subject to physical inspection requirements. But when the location is not held out to the public as a physical office location, no physical records are maintained, all activities occur through centralized electronic systems, and supervision may be conducted remotely, there should be no reason to consider the location as being a “branch office” nor should there be any reason to inspect the physical location. Such locations should qualify as non-branch locations for which members only need to keep an address on file but should have no obligation to register or inspect.

³ FINRA Rule 3110(f)(1): “Office of Supervisory Jurisdiction” means any office of a member at which any one or more of the following functions take place: (A) order execution or market making; (B) structuring of public offerings or private placements; (C) maintaining custody of customers’ funds or securities; (D) final acceptance (approval) of new accounts on behalf of the member; (E) review and endorsement of customer orders, pursuant to paragraph (b)(2) above; (F) final approval of retail communications for use by persons associated with the member, pursuant to [Rule 2210\(b\)\(1\)](#), except for an office that solely conducts final approval of research reports; or (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

⁴ FINRA Rule 3110(f)(2): (A) A “branch office” is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such

Background and Discussion:

Under the Proposal, an associated person's private residence where supervisory activities are conducted shall qualify as a non-branch location, provided that the following criteria for the residence are met:

- have only one associated person conducting business at the location;
- not be held out to the public as an office;
- not be utilized for meetings with customers or prospective customers;
- ensure any sales activity taking place at the location complies with the current primary and secondary residence exclusions;
- not handle customer funds or securities;
- ensure that the associated person is assigned to a specific branch office;
- ensure communications with the public are subject to the firm's supervision;
- use electronic communications solely within the broker-dealer's electronic system;
- be included on a list of residence locations maintained by the member; and
- a restriction from maintaining original books and records at such location.

Importantly, as noted in the Proposal,

[t]he pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility.... During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker- dealer business is conducted.⁵

⁵ The Proposal at pp. 7, 15-16.

Virtu thoroughly agrees with these statements. With that in mind, we question the need to conduct a physical inspection of an associated person’s residence if the business conducted by the person is fully electronic and maintained in the firm’s computer database (as in the case of our employee base). Under the Proposal, what would the firm’s branch office examiners be looking for during such an inspection? What would be the purpose of the visit? If a firm’s branch office examiners needed to speak with an associated person, they could do so via phone, video conference (or similar technology) or request that the associated person report to the firm’s office for an interview.

There is, of course, currently active precedent for allowing firms to conduct inspections remotely. In the heart of the pandemic, the SEC approved FINRA’s request for a temporary rule change to permit remote inspections, which has since been extended through the end of 2022. In its initial filing seeking to permit such relief, FINRA observed that:

The advent of technology and automation in the financial industry has significantly changed the way in which members and their associated persons conduct their business, communicate, and meet their regulatory obligations. FINRA recognizes that firms generally use an array of technological tools to facilitate their supervisory practices (e.g., surveillance systems; electronic tracking programs or applications; electronic communications, including video conferencing tools), which many firms have leveraged to create and implement remote inspection plans, on a temporary basis, in response to pandemic-related operational challenges. FINRA believes that proposed Rule 3110.17 would provide a sensibly tailored regulatory alternative for firms to fulfill their obligations under Rule 3110(c) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. (emphasis added).⁶

Virtu firmly believes that advances in technology and changes in how employees interact in the workplace justify modernizing the supervisory framework to move away permanently from requiring physical inspections of residential supervisory locations. We believe that such an amendment would represent a “*sensibly tailored regulatory alternative*” that “*would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements.*” In summary, given the array of technologies available to facilitate firms’ remote supervision of their employees, we believe there is no longer a need or justification for requiring physical inspections of residential supervisory locations and urge the SEC and FINRA to reconsider this element of the supervision rule.

⁶ *Proposed Rule Change to Adopt Temporary Supplementary Material .17* (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision), at pp. 11-12 (Nov. 6, 2020), available at <https://www.finra.org/sites/default/files/2020-11/SR-FINRA-2020-040.pdf>.

* * *

We would like to thank the staffs of the SEC and FINRA for considering the Proposal and for seeking to modernize the current rule set. We believe that the COVID-19 pandemic taught us much about how far our marketplace has evolved and our ability and need to rely on our computer based infrastructure that performed so well during extremely uncertain and challenging times.

Respectfully submitted,



Thomas M. Merritt
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime E. Lizarraga, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets
Mr. Robert Cook, Chief Executive Officer, FINRA