

August 25, 2022

Via Electronic Submission
Vanessa A. Countryman
Secretary
Securities and Exchange Commission 100 F Street NE
Washington, D.C. 20549-1090

**Re: 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)**

Dear Ms. Countryman:

I. INTRODUCTION

Canaccord Genuity LLC (“CG”) appreciates the opportunity to submit this comment letter on the proposed rule change of the Financial Industry Regulatory Authority (“FINRA”) to adopt Supplementary Material /.19 (the “Proposal”) under FINRA Rule 3110 (Supervision).

1.1 About Canaccord Genuity LLC

By way of background, CG is the U.S. registered broker-dealer subsidiary of Canaccord Genuity Group Inc., a leading independent, full-service financial services firm, publicly traded on the Toronto Stock Exchange. Canaccord Genuity Group Inc., together with its global subsidiaries, strive to generate value for their individual, institutional and corporate clients through comprehensive brokerage services, research and strategy, investment banking, and wealth management services.

CG is an introducing broker dealer who provides a wide range of sales and execution services primarily to highly sophisticated institutional clients and wholesale retail broker dealers. CG is a leading liquidity provider in the over-the-counter space focused on trading and market-making in American Depositary Receipts (“ADRs”), foreign ordinary shares (“F shares”), and other OTC Markets securities. CG also provides multi-asset class execution, expertise and insight to institutional clients through equity sales and trading, portfolio and electronic trading, equity derivatives trading, and fixed income trading.

CG also maintains an active investment banking franchise that is focused on driving value for growth companies. This investment banking business includes traditional capital markets and merger and acquisition (“M&A”) advisory services and has been bolstered by recent acquisitions of M&A boutiques Sawaya Partners and Petsky Prunier. CG’s investment banking franchise

facilitates a robust market for companies in emerging growth and value sectors, including, Technology, Media, Marketing, and Information Services, Healthcare, Industrial & Sustainability, and Consumer.

1.2 Executive summary: CG supports the Proposal but finds the Proposal too narrow in its design

The COVID pandemic permanently changed the financial industry. Confronted with a sudden need to conduct, monitor, record, and supervise work remotely, FINRA members, and members of the financial industry more generally, showed enormous resilience and flexibility in their pivot to remote supervision and remote work. Implementing this pivot, firms like CG leveraged what was already known: that trading and investment banking businesses are entirely, or almost entirely, conducted through electronic channels that are easily recorded and monitored. Accordingly, as the pandemic wore on, firms like CG, and their regulators, found not only that business could be conducted and supervised remotely, but also that productivity and client service were unaffected by remote work, and that many firm associated persons prefer a hybrid of remote and in-office work.

Many firms like CG, having operated under these conditions for over two years, now seek to permanently implement changes that brought efficiency and employee satisfaction increases while not sacrificing the ability to monitor and supervise associated person activity. In that respect, CG believes that the Proposal is an important step in the direction of permitting this modernization. However, CG believes that the all-electronic nature of trading and investment banking warrants those activities' inclusion in the Proposal.

Part II of this letter presents an overview of the Proposal, and Part III presents CG's recommendations for improvement of the Proposal. Part IV concludes this letter with our offer of assistance to the Commission and FINRA.

II. OVERVIEW OF THE PROPOSAL

2.1 Definition of "branch office" and "Office of Supervisory Jurisdiction"

FINRA Rule 3110 sets forth certain basic requirements for supervision, and for the structure of supervisory systems at FINRA member firms.

Under Rule 3110(f)(2)(A), a "branch office" is defined as "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". The branch office definition is subject to certain exclusions¹, but under Rule 3110(f)(2)(B) any location that is responsible for supervising the activities of associated persons at one or more non-branch locations is considered to be a branch office.

¹ See FINRA Rule 3110(f)(2)(A)(i) through (vii).

Under FINRA Rule 3110(f)(1), an “Office of Supervisory Jurisdiction” is defined to mean 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.

2.2 *The Proposal will permit specified activities to be conducted from a non-branch “Remote Supervisory Location”*

Under the Proposal, notwithstanding any other provisions of Rule 3110(f), a location that is the associated person’s private residence where supervisory activities are conducted, including those described in Rule 3110(f)(1)(D) through (G) [items (D) through (G) immediately above] or in Rule 3110(f)(2)(B), shall be considered for those activities a non-branch location (“Remote Supervisory Location”).

2.3 *Provisos and exclusions from the Proposal*

2.3.1 A Remote Supervisory Location must meet 10 conditions

In order for a location to be considered a Remote Supervisory Location, under the Proposal,² the following 10 conditions must be met:

- (1) only 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;
- (2) the location is not held out to the public as an office;

² See Proposed Supplementary Material 3110.19(a)(1) through (10).

- (3) the associated person does not meet with customers or prospective customers at the location;
- (4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii);
- (5) neither customer funds nor securities are handled at that location;
- (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;
- (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;
- (8) all electronic communications by the associated person at that location are made through the member's electronic system;
- (9) a list of the residence locations is maintained by the member; and
- (10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

2.3.2 A Remote Supervisory Location is subject to nine categories of exclusion

Under the Proposal,³ a location is not eligible for designation as a Remote Supervisory Location in accordance with Rule 3110.19 if any of the following nine disqualifying conditions are true:

- (1) the member is designated as a Restricted Firm under Rule 4111;
- (2) the member is designated as a Taping Firm under Rule 3170;
- (3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location;
- (4) 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;
- (5) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04;

³ See Proposed Supplementary Material 3110.19(b)

- (6) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency;
- (7) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association;
- (8) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; or
- (9) one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the MSRB.

While CG appreciates the efforts made by FINRA, it is the view of CG that:

- The proposed conditions are too broad, and unnecessarily restrict investment banking and trading firms; and
- The proposed exclusions are too broad.

Specifically, CG believes that:

- Investment banking and trading, as those businesses are conducted today, are of a nature that makes remote work and remote supervision appropriate; and,
- FINRA rules already sufficiently regulate supervisory systems such that there is no reason to exclude certain of the enumerated categories – especially new associated persons – from the ability to conduct business from a Remote Supervisory Location.

III. COMMENTS TO THE PROPOSAL

3.1 Trading (including market making) should be permitted from a Remote Supervisory Location

As noted above, the definition of Remote Supervisory Location will exclude those locations at which "order execution or market making" takes place. This is because the definition of Remote Supervisory Location does not extend to locations at which order execution or market making takes place for purposes of Rule 3110(f)(1)(A). This will, if adopted, prevent many if not most trading personnel from operating from a Remote Supervisory Location. CG believes that this exclusion is unnecessary for three principal reasons.

First, trading and market making is a business that is conducted nearly exclusively through electronic systems and the act of trading is the same regardless of where the trader sits, as a trader is not able execute orders or route orders outside of CG's order management system ("OMS"). While telephone, which is not required to be captured and/or retained, is still used from time to time, the dominant means by which trading and market making occurs today is electronic, through electronic communications networks, FIX lines, and similar means. The nature of trading and market making does not involve generating paper records outside of those electronic systems, so there is not a concern of traders generating or storing physical records at their residences. Accordingly, the real-time activities of traders are captured and retained, in accordance with SEC and FINRA books and records requirements, as they occur. Further, the same electronic systems by which trading occurs employ market access and other controls, including pre- and post-trade risk controls that enforce trading and market making limitations at the level of the individual trader. These activities are also subject to centralized, firm-level monitoring to ensure that if trading thresholds or capital levels are breached, supervisory personnel will be immediately aware and remedial steps taken. Similarly, firms are able to restrict or cut-off access remotely to the trading systems to prevent any unwanted trading. Finally, improvements in teleconference technology has greatly improved the ability of traders to interact with one another and their supervisors on an ongoing basis and throughout the trading day. CG trading desks, for example, employ live video chats throughout the day, enabling the desk supervisors to monitor desk chatter, making the team interaction and supervision virtually indistinguishable from physical, in-person interaction. Indeed, supervisors are now able to hear all conversations happening on their trading desks, as opposed to sitting in a large trading floor where they can only hear the conversations immediately around them. Given that all trading activities are subject to this highly detailed, highly automated capture, retention, and monitoring and supervision, it seems odd to then say that conducting such business from a residential supervisory location is prohibited.

Second, the Proposal raises hiring and retention issues for FINRA member firms, who are often competing with various non-member firms, for the talents of persons who would, within member firms, act in a trader capacity. Adopting rules such as the Proposal will put FINRA members on disadvantaged and unequal footing relative to such non-member firms with respect to hiring, since such non-member firms will now be able to offer remote work as an option, while

member firms will have to choose between costly and burdensome OSJ registration as a precondition to remote work and outright prohibition of remote work. Excluding trading from efficient eligibility to work from a Remote Supervisory Location puts firms at a disadvantage when they seek to hire associated persons from other firms, from other parts of the financial industry, or from other industries. This disadvantage will create barriers to mobility in the industry, and will particularly affect industry mobility for disadvantaged persons, or for persons with parenting or elder-care responsibilities, for whom remote work levels the playing field. In the recent past, FINRA has requested comment on rules that will establish barriers to entry or mobility for persons traditionally underrepresented in the industry.⁴ This is such a rule.

Finally, as a result of the events on 9/11, and more recently, during Hurricane Sandy, trading firms throughout the industry have taken steps to provide duplicate home trading systems to staff to ease market disruption and facilitate trading during disaster recovery periods. With respect to CG, these trading systems have been in place for many years and have eased the challenges of work-from-home when needed by employees on a one-off basis, and then again, during the prolonged period of the COVID pandemic. CG notes that trading personnel throughout its global organization have been working remotely during COVID and CG has found no systemic failures with that arrangement that suggest that trading should return to an in-office model.

In any event, if FINRA pursues requiring trader's homes to be registered as OSJs, CG respectfully requests that it relieve those traders from having to take and pass the Series 24 General Securities Principal Examination, given that the day-to-day responsibility of the individual is not changing in a meaningful way to require them to qualify as a principal or supervisor of the member firm.

3.2 Investment banking should be permitted from a Remote Supervisory Location

As noted above, the definition of Remote Supervisory Location will exclude those locations at which "structuring of public offerings or private placements" takes place. This is because the definition of Remote Supervisory Location does not extend to locations at which structuring of public offerings or private placements takes place for purposes of Rule 3110(f)(1)(B). This will, if adopted, prevent many if not most investment bankers from operating from a Remote Supervisory Location. CG believes that this exclusion is unnecessary for four principal reasons.

First, of all the activities conducted by FINRA member firms, investment banking may be that which has been conducted remotely for the longest time. For decades, investment bankers have regularly conducted their business through out-of-office travel, and firms learned to supervise and control the activities of investment bankers long before the electronic tools that now provide greater monitoring and oversight capability. Correspondingly, because of the nature of their work, investment bankers have been trained to work remotely in a manner that is sensitive to applicable law and regulation. Similarly, member firms have developed controls to ensure that transactions

⁴ See FINRA Regulatory Notice 21-17.

are appropriately supervised, for example, by requiring commitment committee approvals of engagements. It is incongruous to say that investment bankers, who are often “on the road” for weeks out of every month, cannot undertake their activities from a residential location. Given an individual banker may be working as often from airport lounges and hotel rooms as they are from their home location, requiring firms to register home locations of investment bankers as OSJs seems inordinate and not keeping with how the industry has historically operated.

Second, investment banking is a business that is primarily conducted by in-person meetings, telephone (which is not required to be captured and/or retained), or by electronic communications, which are captured and retained in accordance with SEC and FINRA books and records requirements. Furthermore, documents are created electronically and retained in electronic systems and are no longer routinely maintained as paper files on firms’ premises. Given that all investment banking materials are subject to capture, retention, and ordinary-course monitoring, it seems odd to then say that conducting such business from a non-OSJ residential supervisory location should be prohibited.

Third, the Proposal raises hiring and retention issues for FINRA member firms, who are often competing with various non-member firms, such as corporate issuers, investment advisers or private equity firms, for the talents of persons who would, within member firms, act in an investment banking capacity. Adopting rules such as the Proposal will put FINRA members on disadvantaged and unequal footing relative to such non-members with respect to hiring, since such non-members will easily be able to offer remote work as an option, while member firms will have to choose between costly and burdensome OSJ registration as a precondition to remote work and outright prohibition of remote work. Excluding investment banking personnel from efficient eligibility to work from a Remote Supervisory Location puts firms at a disadvantage when they seek to hire associated persons from other firms, from other parts of the financial industry, or from other industries. This disadvantage will create barriers to mobility in the industry, and will particularly affect industry mobility for disadvantaged persons, or for persons with parenting or elder-care responsibilities, for whom remote work levels the playing field. In the recent past, FINRA has requested comment on rules that will establish barriers to entry or mobility for persons traditionally underrepresented in the industry. As stated above, this is such a rule.

Finally, CG notes that investment bankers throughout its global organization have been working remotely during COVID, and CG has found no systemic failures with that arrangement that suggest that investment banking should return to a full-time, in-office model.

Alternatively, if FINRA is unable to concur with this reasoning, CG respectfully requests that the interpretation of rule 3110(f)(1)(B) be clarified to indicate the belief of FINRA that this provision does not extend to investment banking activities relating to other than public and private offerings, such as M&A advisory activities or restructuring activities. The phrasing of Rule 3110(f)(1)(B) (“public offerings or private placements”) makes clear that the intention of the Rule is to require OSJ registration for capital raising activities, and in CG’s view the Rule should not be stretched to include M&A advisory activities, as well.

In addition, if FINRA pursues requiring investment bankers' homes to be registered as OSJs, the Firm respectfully requests that it relieve those bankers from having to take and pass the Series 24 General Securities Principal Examination, given that the day-to-day responsibility of the individual is not changing in a meaningful way to require them to qualify as a principal or supervisor of the member firm.

3.3 A newly hired associated person should be allowed to work from a Remote Supervisory Location

One of the proposed exclusions found in the proposal that prevents a residential location from being a residential supervisory location is a location where "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". CG respectfully submits that this condition is unnecessary given other industry regulations, and also that this exclusion will put member firms at a disadvantage when seeking to hire new team members. CG takes this view for two principal reasons.

First, this exclusion is unnecessary given other industry regulations. Any person who is hired to conduct business at a location in a manner that would give rise to OSJ designation by definition is an experienced industry participant. Experienced industry personnel are not only licensed in the applicable representative's or principal's category but have also completed continuing education during their time in the industry. In addition to licensing and continuing education, such industry personnel are also supervised and controlled, not only through day-to-day work and corresponding business evaluations and feedback, but also through the supervisory system that requires capture and review of all electronic communications—which as noted above is overwhelmingly how people communicate in the securities and investment banking industry. Further, any location from which a new associated person works will still be supervised and controlled as an office location, even if it is not a branch location. Finally, each firm is under an obligation to develop and implement a supervisory system that is reasonably designed to seek to ensure compliance with applicable law and regulation. This means that, with respect to new associated persons, each firm must consider the ways by which such person's lack of tenure might need to be the subject of particular policies and procedures. For example, if a firm is concerned by having a new investment banking representative working remotely two days a week, the firm can monitor more of her or his email or can establish check-in calls during the early portion of the new associated person's tenure. This combination of licensing, monitoring, and supervision ensures that all associated persons, even those who are new to a particular firm, will be appropriately supervised and controlled, even if they are permitted to work from a personal residence.

Second, excluding new associate persons from eligibility to work from a Remote Supervisory Location puts firms at a disadvantage when they seek to hire associated persons from other firms, from other parts of the financial industry, or from other industries. This disadvantage will create barriers to mobility in the industry, and will particularly affect industry mobility for disadvantaged persons, or for persons with parenting or elder care responsibilities, for whom remote work levels the playing field. In the recent past, FINRA has requested comment on rules

that will establish barriers to entry or mobility for persons traditionally underrepresented in the industry. This is such a rule.

Alternatively, instead of excluding a newly hired associated person who is a designated supervisor from the Proposal, CG requests that FINRA consider allowing a home location of such newly-hired associated person to be registered as a residential supervisory location, but adding the requirement for such persons that an internal branch inspection be conducted of such location within the first year of designation thereof. Whether a member registers the home location as an OSJ or as a remote supervisory location, FINRA's existing rules, as discussed in further detail above, already require that member firms continue to supervise and control those locations as an office location and provide the associated person with the appropriate training and oversight in conducting their activities. The only difference between the two designations is how often a branch exam is required for the location, so for that reason, CG believes that this type of heightened supervision would address FINRA's articulated concerns.

IV. CONCLUSION

We appreciate the opportunity to provide comment on the Proposal. As noted above, CG welcomes the Proposal as a step in the right direction to codify some of what has been learned during the pandemic. While there are many other aspects of the Proposal worthy of comment, CG has chosen to limit its comments to three areas of particular concern. Other firms and groups, including SIFMA, a draft of whose letter we have had the benefit of reviewing, are presenting strong and important comment letters that should be seriously considered.

CG would be pleased to discuss any of the comments herein or provide any additional assistance as the Commission and FINRA proceed with the Proposal. Please do not hesitate to contact the undersigned at (617) 371-3715 if you have any questions.

Sincerely,



Andrew F. Viles
Chief Legal Officer
Canaccord Genuity LLC

cc: Gary Gensler, Chair
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August 25, 2022

Page 11

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