

October 25, 2022

VIA EMAIL rule-comments@sec.gov

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

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, and Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program)(“Pilot Program”) under FINRA Rule 3110 (Supervision); File No. SR-FINRA-2022-021; Release No. 34-95452 (the “Proposals”).

Dear Ms. Countryman:

I appreciate this opportunity to provide the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) with supplemental comments following the meeting with Division of Trading and Markets staff and the Securities Industry and Financial Markets Association (“SIFMA”) on October 12, 2022 to discuss the Financial Industry Regulatory Authority’s (FINRA’s) proposals referenced above. Individuals from the member firms as signatories below wish to add their support of the comments herein. Together, we thank you for your thoughtful consideration.

1. Supplementary Material .19 (Residential Supervisory Location)

We will forego reiterating the various manners in which the U.S. financial services industry and associated workforce have evolved over the past 40 years, not to mention in the past 2.5 years in response to the COVID-19 pandemic. Many other commenters have submitted well-articulated points on this topic. We simply state we support the technological evolution and modernization of the industry. The similarities experienced by the various and disparate industry firms, organizations and additional stakeholders, as regularly communicated to the SEC, illustrates universal observations and experiences, underscoring the profound shift of our industry into a new, modern era.

FINRA Rule 3110 (f) now finds itself meaningfully misaligned with a significant number of member firms and workforce. This disconnect may and will likely create weaknesses in member firms’ supervisory systems and regulatory compliance oversight. Member firms are currently

required to register locations as an Office of Supervisory Jurisdiction (OSJs), based on an outdated definition, and one may argue mindset, that they would otherwise not classify at the same risk level or status as other, “true” OSJs. Locations held out to the public or used to maintain custody of customers' funds or securities (i.e., “true OSJ”, for lack of a better way of differentiating) have the same status and oversight requirements as a supervisor working from a laptop at their residence. This prescriptive and antiquated inspection requirement may in many instances divert valuable compliance and supervision resources to low risk classifications, thereby pulling resources away from what the firm appropriately classifies as potentially higher risk issues and/or offices.

Registered as an OSJ, the address of a supervisor’s residence then becomes publicly visible via BrokerCheck. The supervisor, and family members residing with them, become instantly vulnerable to inappropriate personal contact by customers, the public, sometimes rising to threats against their person or family. We would like to state unequivocally that the radical misalignment between the rules that require the public reporting on BrokerCheck of home office OSJ addresses must be addressed and resolved immediately. Member firms should not have to accept any rule that knowingly places our workforce in harms’ way. We request urgency on this by the SEC, FINRA and NASAA.

Further, the publication of a supervisor’s home address may also result in the erroneous receipt of correspondence, outside of the member firm’s intended supervisory procedures. The consequence of having one’s home registered as an OSJ can disincentivize associated persons, including Diversity, Equity and Inclusion (DEI) candidates for promotion, from accepting supervisory qualifications and responsibilities. This can place member firms at a competitive disadvantage with non-member firms when it comes to both retention and the war for talent these days. The expectations of a modern day workforce have rapidly evolved from decades old status quo into a modern Work From Anywhere (WFA), DEI-enhancing era. Major online job posting portals now have a filter specifically for “Remote/Work from Home”¹.

We support the adoption of the Residential Supervisory Location (RSL) branch office classification. We encourage an adjustment to the disqualification in the current RSL proposal 3110.19(b)(4) for “*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.*” Instead of excluding a newly hired supervisor from otherwise qualifying to register his/her residence as an RSL, we support a requirement for such branch to be inspected within the first year of designation verses registering that location as an OSJ. This adjustment would resolve the OSJ registration classification, the subsequent registered branch location fee, visibility on BrokerCheck and the filing process necessary to reclassify the location after a year has

¹ www.indeed.com, www.ziprecruiter.com, www.linkedin.com, www.monster.com, www.glassdoor.com

passed. We believe this is reasonable and would address concerns articulated by FINRA. This suggestion was submitted in another comment letter².

2. Supplementary Material .18 (Remote Inspections Pilot Program)

Is The Way It Is Good Enough?

A few comment letters opposing³ the adoption of this Pilot Program gave examples of wrongdoing related to inadequate supervision of branch offices. The examples were from as far back as 1997 and up until recent years. These occurred under the current FINRA Rule book and the supplemental, clarifying revisions. However, the world has changed. Disregarding the lessons learned in rapid form since 2020 by member firms and employees in the areas of resiliency, changes in business models, workforce demands, investor expectations, firm operations, business continuity, disaster recovery, and now widely utilized technology would be misguided. The RSL and Pilot Program proposals are aimed toward modernizing the FINRA Rule book built on investor protection objectives, not reducing them.

Gather the Data

We reiterate that the Pilot Program proposal is just that, a pilot program, and not an industry wide adoption. Some member firms have expressed that they do not have the need for remote work arrangements nor remote inspections, while other member firms do. The Pilot Program is voluntary. It would allow only those eligible member firms who opt-in to the Pilot Program with the ability to conduct inspections remotely without an on-site visit to such location, subject to specified terms. Firms would not be required to conduct inspections in a remote capacity. The Pilot Program is intended to provide FINRA with specific, structured data from member firm Pilot participants to evaluate their experiences—positive and negative—and inspection findings. This data would enable FINRA to systematically assess the overall impact on firms' supervisory systems, which has not been feasible with information drawn from the pandemic-related office shutdowns.

Universal Inspection Tools

Some comment letters⁴ expressed concerns regarding how small member firms would conduct remote inspections and if the tools to do so would be accessible to all firms. We would remind regulators to look deeper into the perspective of such comments and if they are related to individuals who make their living from conducting branch inspections according to the current Rule 3110. Allowing inspections to be conducted remotely could significantly affect their personal income. In a recent industry publication article a commenter “.. cautioned that smaller brokerages may still need in-person inspections because they don't utilize artificial intelligence,

² <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138308-308366.pdf>

³ <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138299-308358.pdf>,
<https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20137299-307862.pdf>

⁴ <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20137299-307862.pdf>

robotics and other advances that FINRA cites in the proposal. That technology isn't available across the board,"⁵ We wish to counter the validity of these concerns. None of the member firms we have spoken to, including small member firms, are aware of any firm using robotics to conduct remote inspections. In fact, we have received universal feedback from consultants and member firms of all sizes that the most popular tools they use for remote inspections are the tools most people already have and are familiar with using- virtual meeting programs and smart phones/devices.

We refer to a previously submitted comment letter which provided examples of modern resources and methods for conducting branch inspections remotely⁶.

A few other examples of how branch inspectors have used these tools:

- The inspector holds a live, visual video call with a person in the respective branch.
- Live virtual video calls and meeting programs enable the inspector to have an unannounced, virtual presence in a branch.
- The inspector is able to hear background noises and chatter at the location and direct the individual to what the inspector wants to view.

Other Industry Use

An example of how smart devices are used to inspect physical aspects of a location is described by the National Fire Prevention Association (NFPA)⁷. The NFPA published a [Guidance for Remote Video Inspection \(RVI\)](#)⁸. The guide indicates the popular use of smartphones and recommends tips for how inspectors can use them. It further indicates that "RVI should be employed to achieve the same (or enhanced) results as an on-site inspection."

Other notable comments from member firms of all sizes, various business models, and from across the country include:

- HOME & HYBRID MODEL: many reported more employees working from home or in a hybrid status (part-time in a "true OSJ" and part-time from home or in other locations).
- BASIC TOOLS: the tools they use for remote inspections were simple office tools such as online meeting programs or smart phones. When asked if more complex technology tools would be used, not one member firm had any knowledge of more complex technology that could be utilized more efficiently than what they were using.

⁵ See InvestmentNews, *Finra proposes 3-year pilot program for remote office inspections* (Aug. 2, 2022), <https://www.investmentnews.com/finra-proposes-3-year-pilot-program-remote-office-inspections-224854>

⁶ <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138355-308387.pdf>

⁷ NFPA Today, 6/02/2021, *As remote inspections become more common, NFPA to host one-hour session addressing its possibilities, advantages, and potential risks*, <https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NFPA-Today/Blog-Posts/2021/06/02/As-remote-inspections-become-more-common-NFPA-to-host-one-hour-session>

⁸ <https://www.nfpa.org/-/media/Files/Code-or-topic-fact-sheets/RVIFactSheet.pdf>

- USING IN-PERSON AND REMOTE: Member firms who plan to opt-in to the Pilot Program expressed that they still foresee a mix of conducting inspections in-person and remotely. They reiterated that the method would be dependent on a risk assessment, many unique facts and circumstances regarding each branch, inspection personnel and resources to formulate inspection protocols “reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA rules.”⁹
- PERSONAL SPACE: Firms highlighted that inspectors can encounter unforeseen, uncomfortable circumstances in particularly when conducting in-home inspections (i.e. HR related, pet aggression, other family members, etc.). Firms try to anticipate and evaluate these aspects as well when formulating the respective branch inspection protocol.
- BEST PRACTICES: Firms expressed that they also conduct some form of fact finding using their firm records, including human resource records, and publicly available online tools and resources. They felt these can be very effective at researching and uncovering associated persons’ undisclosed activity. Vendors appear to be responding with new products, services and training to help firms with remote/hybrid oversight and supervisory systems¹⁰. The methods and tools to conduct inspections in a remote capacity can best be described as ‘a creative approach’ rather than requiring high-priced technology expenditures¹¹. Best practices will evolve, as they always do.

In Conclusion

- **We support the adoption of Supplementary Material .18 (Remote Inspections Pilot Program). The Pilot Program would enable the SEC, FINRA, and NASAA to assess the tools and methods and effectiveness of conducting inspections in a remote capacity.**
- **We strongly encourage the Commission to simultaneously approve both proposals with an effective date on or before December 31, 2022, the sunset of the temporary relief in 3110.17. If this is not possible, we implore the issuance of an extension in order for firms to implement a transition plan.**
- **We request the SEC, FINRA, and NASAA remove people’s home addresses off of BrokerCheck now please.**

⁹ FINRA Rule 3110 (c)(1) <https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110>

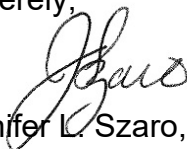
¹⁰ Global Relay, 7/1/2022 blog. *Risk-based Supervision and the Hybrid Workplace* <https://www.globalrelay.com/compliance-for-your-distributed-enterprise/>

¹¹ A list of resources and tools for firms is posted on FINRA’s PEER-2-PEER COMPLIANCE LIBRARY, through the FINRA Gateway. Refer to “XML Branch Inspection Report Template - Remote or Onsite” and “XML Remote Branch Inspection Resources”.

- **We support the adoption of the Residential Supervisory Location branch office classification and encourage the modification to 3110.19(b)(4).**
- **We emphasize that conducting an inspection of registered and non-registered branch locations is just one of many aspects of a member firm's entire day -to-day supervision system and ongoing policies and procedures.**

We appreciate the opportunity to provide this supplemental comment for the record and include our support. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,



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