



November 23, 2022

Via E-Mail

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2022-019
Order Instituting Proceedings to Determine Whether to Approve or Disapprove
a Proposed Rule Change to Adopt Supplementary Material .19 (Residential
Supervisory Location) under FINRA Rule 3110 (Supervision)**

Dear Secretary:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the Securities and Exchange Commission's ("SEC") Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110.² On July 27, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the SEC a proposed rule change that, if adopted, would add new Supplementary Material .19 ("SM.19") to FINRA Rule 3110 (Supervision) (the "Proposed Rule"). SM.19 would establish the Residential Supervisory Location classification for associated persons' private residences where lower risk activities are conducted.³

BACKGROUND

On August 23, 2022, the Committee submitted a comment letter that was generally supportive of the Proposed Rule, while offering several specific comments for the limited purpose of seeking further flexibility in the scope of locations that could be classified as a Residential Supervisory Location under proposed SM.19.⁴ The Committee is aware that the SEC has received comments, particularly from the North American Securities Administrators Association, Inc. ("NASAA") that disfavor the Proposed Rule in its entirety.⁵ NASAA's objections rest, in part, on what the Committee believes is the inaccurate foundation that FINRA has not offered a "robust basis" or "sufficient justification[]" for the Proposed Rule.⁶

¹ The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

² See Securities Exchange Act Release No. 34-96241 (Nov. 4, 2022) 87 FR 67969 (Nov. 10, 2022) (File No. SR-FINRA-2022-030), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-10/pdf/2022-24509.pdf>.

³ See Securities and Exchange Act Release No. 34-95379 July 27, 2022) 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019), available at <https://www.finra.org/sites/default/files/2022-08/sr-finra-2022-019-federal-register-notice.pdf>.

⁴ The Committee's August 23, 2022 comment letter to the Proposed Rule is posted at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137273-307827.pdf>.

⁵ NASAA's August 23, 2022 comment letter to the Proposed Rule ("NASAA's Comment Letter") is posted at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137298-307861.pdf>.

⁶ *Id.*

COMMITTEE COMMENTS

The Committee believes that NASAA's objections are unfounded. In its Notice of Filing of the Proposed Rule (the "Notice"), FINRA noted that it "periodically assess[es] the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits."⁷ FINRA then provided a detailed history of the evolution of the Office of Supervisory Jurisdiction ("OSJ") and branch office definitions, which it noted have "evolve[d] with technological and industry changes while also remaining focused on promoting investor protection."⁸

In light of significant industry changes brought about by the COVID-19 pandemic and notable technological advancements, FINRA made a deliberate decision to initiate this rulemaking following its consideration of comments in response to FINRA Regulatory Notice 20-42, in which FINRA sought feedback from industry stakeholders (including NASAA and the Committee) as to a number of industry changes prompted by the COVID-19 pandemic.⁹ FINRA acknowledged in the Notice that based on feedback from member firms, it understood that many broker-dealers are moving towards a blended workforce model, with employees working both on-site in a conventional office location and remotely in a private residence.¹⁰ FINRA further acknowledged that firms have successfully developed and utilized technological tools to facilitate their supervisory practices, including surveillance systems, electronic tracking programs or applications, and electronic communications.¹¹

NASAA argues that FINRA's reliance on technological advancements as a justification for the Proposed Rule rests on "anecdotal industry claims."¹² Notwithstanding that criticism, NASAA appears to clearly recognize the value of technology in its 2022 Enforcement Report by noting that "technological advances [can] ma[ke] the impossible seem inevitable" and that "remarkable advances in technology are quickly adding futuristic elements in the financial markets."¹³ The Committee also rejects NASAA's implication that FINRA's reliance on broker-dealers' first-hand and "on the ground" experiences with remote supervision and/or inspection do not constitute a sufficient basis for the Proposed Rule. In fact, such experiences constitute FINRA's best evidence when assessing how to modify its rules to account for the challenges posed by the growing and staying trend of remote work.

Further, FINRA's justification for the Proposed Rule does not rest solely on broker-dealers' so-called "anecdotal" experiences with utilizing technological advancements to supervise their workforce, but also relies on regulators' "utiliz[ation] [of] advancements in technology to support their examinations and otherwise further investor protections."¹⁴ Therefore, far from relying solely on "anecdotal industry claims", FINRA's justification for the Proposed Rule rests on its own experiences in using technology to effectively and efficiently conduct its oversight responsibilities over member firms. Finally, while attacking FINRA's use of "anecdotal industry claims" to support the Proposed Rule, NASAA itself relies on unsupported, anecdotal examples of misconduct that allegedly would not have been uncovered by remote inspection using technological means.¹⁵

⁷ 87 FR 47248, 47249-50.

⁸ 87 FR 47248, 478250.

⁹ See FINRA Regulatory Notice 20-42, available at <https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-42.pdf>.

¹⁰ 87 FR 47248, 47249.

¹¹ 87 FR 47248, 47253.

¹² See NASAA's Comment Letter.

¹³ See NASAA's 2022 Enforcement Report, available at <https://www.nasaa.org/wp-content/uploads/2022/09/2022-Enforcement-Report-FINAL.pdf>.

¹⁴ 87 FR 47248, 47251.

¹⁵ See NASAA's Comment Letter.

CONCLUSION

The Committee reiterates the comments found in its August 23, 2022 comment letter and appreciates FINRA's commitment to modernizing its rules "where the regulatory burden of a rule significantly outweigh[s] the benefits" ¹⁶ The Proposed Rule, if adopted, would allow for a more flexible approach to supervision. With regard to certain home offices that fall within the definition of a Residential Supervisory Location, it would remove the bright-line, one-year inspection time requirement applicable to OSJs and allow broker-dealers to implement a risk-based approach to the inspection of the locations of supervisory personnel.

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch ([REDACTED]) or Eric Arnold ([REDACTED]) with any questions or to discuss this comment letter.

Respectfully submitted,

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

¹⁶ 87 FR 47248, 47251.