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December 9, 2022

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

**Re: File No. SR-FINRA-2022-019 – Proposed Rule Change to Adopt
Supplementary Material .19 (Residential Supervisory Location) under FINRA
Rule 3110 (Supervision)**

Dear Ms. Countryman:

The Financial Industry Regulatory Authority (“FINRA”) submits this letter in response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing (the “Proposal”) to amend Rule 3110 to add new Supplementary Material .19 (Residential Supervisory Location) (“RSL”). The Proposal would align FINRA’s definition of an office of supervisory jurisdiction (“OSJ”) and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to specified safeguards and limitations.

The Commission published the Proposal for public comment in the Federal Register on August 2, 2022,¹ and received 26 unique comment letters in response to the Proposal.² On September 14, 2022, FINRA consented to an extension of the time period for SEC action on the Proposal to October 31, 2022.³ On October 31, 2022, FINRA submitted a

¹ See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019).

² See Attachment A for the list of commenters.

³ See Letter from Sarah Kwak, Associate General Counsel, FINRA, to Daniel Fisher, Division of Trading and Markets, SEC, dated September 14, 2022.

response to the comments.⁴ FINRA did not propose to change the terms of the Proposal in response to those comments.

The Commission published a notice and order to solicit comments and to institute proceedings to determine whether to approve or disapprove the Proposal.⁵ The Commission received five additional comment letters directed towards the Proposal in response to the Order Instituting Proceedings.⁶ CAI and FSI, which previously submitted supportive comment letters addressing the Proposal,⁷ reaffirm their overall support. PIABA, which also previously submitted a comment letter in opposition to the Proposal,⁸ reaffirms its position, expressing the continuing belief that the Proposal runs counter to investor protection. PIABA's concerns are not materially different from those raised in its prior comment letter, and thus FINRA refers to its response in the Response to Comments.⁹

⁴ See Letter from Kosha Dalal, Vice President and Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated October 31, 2022 (“Response to Comments”).

⁵ See Securities Exchange Act Release No. 96191 (October 31, 2022), 87 FR 66767 (November 4, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019) (“Order Instituting Proceedings”).

⁶ See Letter from Sandip Khosla, General Counsel, Two Sigma Securities, LLC, to Vanessa A. Countryman, Secretary, SEC, dated October 31, 2022 (“TSS”); Letter from Hugh D. Berkson, President, Public Investors Advocate Bar Association, to Vanessa Countryman, SEC, dated November 22, 2022 (“PIABA”); Letter from Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers, to Secretary, SEC, dated November 23, 2022 (“CAI”); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Secretary, SEC, dated November 23, 2022 (“FSI”); and Letter from Andrew Hartnett, President, North American Securities Administrators Association, Inc., to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022 (“NASAA”).

⁷ See generally Letter from Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers, to Secretary, SEC, dated August 23, 2022; and Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Secretary, SEC, dated August 23, 2022.

⁸ See generally Letter from Michael S. Edmiston, Public Investors Advocate Bar Association, to Vanessa Countryman, SEC, dated August 23, 2022.

⁹ See Response to Comments, pp. 2–5.

The concerns raised by the remaining two commenters—NASAA and TSS—are briefly described below.

Breadth of RSL Activities; Exemption from Inspection Requirement

TSS requests clarification on whether the Proposal would deem as a non-branch location a private residence at which the associated person engages in order execution or market making (Rule 3110(f)(1)(A)). In addition, TSS recommends exempting the homes at which associated persons engage in electronic trading from the Rule 3110(c) inspection requirement due to the nature of electronic trading and the ability of electronic trading firms to electronically supervise the activities of their associated persons. With respect to the former, FINRA clarifies that a private residence at which an associated person engages in the functions described under Rule 3110(f)(1)(A) would be deemed an OSJ, not a non-branch RSL under the terms described in the Proposal.¹⁰ With respect to TSS's view on creating an exemption from the inspection requirement, that comment is beyond the scope of the Proposal. However, FINRA will consider comments to revise the inspection requirements more generally as part of any future initiatives to consider the OSJ and branch office definitions more broadly.¹¹

Safeguards and Conditions

The proposed safeguards and conditions for RSL designation would include, among others, that the firm maintains a list of residence locations (proposed Rule 3110.19(a)(9)), and all books or records the firm is required to make and preserve under the federal securities laws or FINRA rules are maintained by the firm other than at the location (proposed Rule 3110.19(a)(10)).

NASAA expresses concern about the ability of regulators “to know whether and where firms have established RSLs[,]” and questions the reliability or completeness of the proposed requirement for firms to maintain a list of RSLs. As stated in the Response to Comments, FINRA expects firms to maintain the list of RSLs in a manner consistent with the existing documentation requirement under Rule 3110(f)(2)(A)(ii).¹² In addition, NASAA suggests that where a regulator requests this list from a firm rather than obtain it

¹⁰ FINRA notes that other commenters raised similar views about expanding the breadth of RSL activities to include order execution or market making, among other activities electronic in nature. See Response to Comments, pp. 5–6.

¹¹ See Securities Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021).

¹² See Response to Comments, p. 8.

through available information in CRD,¹³ such regulator's ability to conduct unannounced examinations may be impeded. FINRA notes that CRD currently provides regulators with information regarding the offices and locations (registered and unregistered) to which associated persons required to be registered are assigned, and FINRA is not proposing to modify this information as part of this Proposal. With respect to the proposed condition pertaining to books and records, NASAA repeats its concerns that the phrase "other than at the location" is too broad and recommends a change to the proposed rule text similar to the change it previously recommended in NASAA's first comment letter.¹⁴ FINRA continues to believe that the language in Rule 3110.19(a)(10), as proposed, is an effective control intended to preclude a firm from maintaining the required books and records at an RSL.

Ineligibility Criteria

The Proposal would set forth several categories that would preclude a private residence from being designated as an RSL. These categories would include a location where an associated person at the location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or a state regulatory agency (proposed Rule 3110.19(b)(6)), and where an associated person has a record of specified regulatory or disciplinary events (proposed Rule 3110.19(b)(9)).

With respect to proposed Rule 3110.19(b)(6) pertaining to a mandatory heightened supervisory plan due to regulatory action, NASAA states that the proposed criterion could allow a firm to "skirt this condition by imposing its own heightened supervisory plan in lieu of having a plan imposed by order or agreement of a regulator." NASAA recommends that a location should also be precluded from being designated as an RSL where a firm has implemented its own heightened supervisory plan, suggesting that this additional layer of supervision upon an associated person warrants an automatic exclusion of such person's private residence as an RSL. FINRA emphasizes that a firm should routinely evaluate its supervisory system to ensure it is appropriately tailored to the firm's business.¹⁵ Such an evaluation may prompt a firm, out of an abundance of caution and independent of specific regulatory requirements or mandates, to undertake additional supervisory measures, including voluntarily imposing a heightened supervisory plan. FINRA believes that to

¹³ The Central Registration Depository ("CRD[®]") is the central licensing and registration system operated by FINRA for the benefit of FINRA, the SEC, other self-regulatory organizations, and state securities regulators.

¹⁴ See generally Letter from Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated August 23, 2022.

¹⁵ See generally Notice to Members 99-45 (June 1999).

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broaden the heightened supervisory category of ineligibility as NASAA suggests could disincentivize a firm from imposing its own heightened supervisory plan as part of effective supervision if the result was RSL ineligibility.

Another criterion that would deem a private residence ineligible for RSL designation is set forth in Rule 3110.19(b)(9), pertaining to where an associated person has a record of specified regulatory or disciplinary events. NASAA renews its recommendations to adjust the language in proposed Rule 3110.19(b)(9) to include a reference to “any state law pertaining to the regulation of securities” within the list of provisions. FINRA declines to adjust the language as NASAA recommends for the reasons stated in the Response to Comments¹⁶ as the list of provisions aligns with Form U4 (Uniform Application for Securities Industry Registration or Transfer), specifically, the questions pertaining to Regulatory Action Disclosure.

* * * * *

FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing and has determined not to amend the Proposal in response to comments. If you have any questions, please contact me at [REDACTED]
[REDACTED]

Best regards,

/s/ Sarah Kwak

Sarah Kwak
Associate General Counsel
Office of General Counsel

¹⁶ See Response to Comments, pp. 12–13.

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2022-019

1. Barbara Armeli, Managing Director, Chief Compliance Officer, Charles Schwab & Co., Inc. & Lynn Konop, Managing Director, Chief Compliance Officer, TD Ameritrade, Inc. (August 23, 2022);
2. Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers (August 23, 2022);
3. Suzy Auletta, SVP and Chief Compliance Officer, Raymond James Financial Services, Inc., & Shawn Barko, SVP, Chief Compliance Officer, Raymond James & Associates, Inc. (August 23, 2022);
4. Casey Bell, Johanna Mears, & Serina Shores, Compliance Team, Huntington Investment Company (September 2, 2022);
5. David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute (August 23, 2022);
6. Jennifer A. Brunner, Chief Compliance Officer, Nanette K. Chern, Chief Compliance Officer, Susan L. La Fond, Chief Compliance Officer, & Susan K. Moscaritolo, Chief Compliance Officer, ACA Foreside (August 22, 2022);
7. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (August 23, 2022);
8. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (October 19, 2022);
9. Peggy E. Chait, Managing Director & Howard Spindel, Senior Managing Director, Integrated Solutions (August 19, 2022);
10. Justin Dirico, Principal and Head of Futures, OTC Direct Futures LLC (August 9, 2022);
11. Michael S. Edmiston, Public Investors Advocate Bar Association (August 23, 2022);
12. Christopher A. Iacovella, Chief Executive Officer, American Securities Association (September 6, 2022);
13. Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc. (August 23, 2022);

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14. Gavin Lucca, Manager, Branch Audit, Commonwealth Financial Network (August 23, 2022);
15. Jim McHale, Executive Vice President, Head of WIM Compliance & Robert Mulligan, Executive Vice President, Global Head of CIB Compliance, Wells Fargo & Company (August 23, 2022);
16. Gail Merken, Chief Compliance Officer, Fidelity Brokerage Services LLC, Janet Dyer, Chief Compliance Officer, National Financial Services LLC, & John McGinty, Chief Compliance Officer, Fidelity Distributor Company LLC (August 23, 2022);
17. Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (August 23, 2022);
18. Seth Miller, General Counsel, Chief Risk Officer, Cambridge Investment Research, Inc. (August 23, 2022);
19. Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group (August 23, 2022);
20. Tamara K. Salmon, Associate General Counsel, Investment Company Institute (July 29, 2022);
21. Mark Seffinger, Chief Compliance Officer, LPL Financial (August 23, 2022);
22. Mark Seffinger, Chief Compliance Officer, LPL Financial (October 25, 2022);
23. Karol Sierra-Yanez, Lead Counsel, Broker-Dealer and Investor Advisor Practice Group, MML Investors Services, LLC (August 23, 2022);
24. Harmony Smith, Financial Advisor (August 8, 2022);
25. Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (October 25, 2022); and
26. Andrew F. Viles, Chief Legal Officer, Canaccord Genuity LLC (August 25, 2022).