December 20, 2022

VIA ELECTRONIC MAIL (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**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to respond to the North American Securities Administrators Association's ("NASAA") and Public Investors Arbitration Bar Association's ("PIABA") comments[2] responding to the Financial Industry Regulatory Authority Inc.'s ("FINRA") response to comments on the proposed rule change to adopt Supplementary Material .19 under FINRA Rule 3110 (the Residential Supervisory Location ("RSL" or "RSL proposal").[3]

SIFMA not only responds to NASAA's recommendation that the Commission withhold approval until FINRA justifies why less frequent inspections of RSLs is warranted, but also PIABA's comments about the industry's return to office. We believe that FINRA has justified a periodic inspection requirement and that PIABA mischaracterizes the industry's return to office plans.

1. A More Frequent Inspection Requirement Is Completely Unnecessary

In its letter, NASAA asserted that FINRA still has not justified why RSLs should be inspected less frequently than other supervisory offices. Although they oppose the RSL outright, presumably they would prefer annual inspections of RSLs, if approved, like the current requirement for Offices of Supervisory

[1] SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the United States and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("**GFMA**").

[2] Letter from Andrew Hartnett, NASAA President and Deputy Commissioner, Iowa Insurance Division (Nov. 25, 2022), https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf; Letter from Hugh D. Berkson, President, PIABA (Nov. 23, 2022), https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151617-320125.pdf.

[3] Letter from Kosha Dalal, Vice President and Associate General Counsel, FINRA (Oct. 31, 2022), https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20148574-314922.pdf.

Jurisdiction (OSJs) or supervisory branch offices. FINRA proposed a regular periodic inspection schedule requirement on RSLs, with a general presumption of "at least" of every three years, which is the same inspection requirement for non-supervisory branch offices and non-branch locations engaged in specified sales activities. We believe FINRA justified a periodic inspection requirement of these locations. The safeguards and conditions of the proposal limit the use of RSLs to lower risk firms, lower risk supervisors, and lower risk supervisory functions, allowing firms to focus resources on higher risk individuals and locations.

The proposal rests on the same basis as the personal residence exemption that registered representatives engaged in sales activities have long been able to utilize, recognizing the evolution in technology and its role in how work is performed for supervisors today. Most, if not all, of the designated supervisory functions that can be performed at an RSL, from approval of new accounts and advertising or sales literature to reviewing and endorsing customer orders, are done electronically <u>today</u>, and captured by the firm's recordkeeping systems. In arguing that there are no low-risk supervisory functions, NASAA ignores the methods in which these functions are performed today. There is very little to be gained from inspecting the surrounding workspace of a supervisor whose duties are performed on a computer. The risks presented by sales activities are not present here. NASAA's position rests on the decades-old rationale for an annual inspection requirement of OSJs and supervisory branches that, notably, has yet to be reexamined in light of technological advances and changes in workforce behavior, as well as nearly 20-year-old guidance before the widespread use of technology and smart phones.[4]

On the contrary, NASAA has not clearly articulated why an annual inspection, rather than other means, would address job performance, or failure to supervise, issues most of concern. They assume an unfamiliarity with technologies that everyone uses today to argue that more frequent (annual),[5] onsite inspections are necessary to ensure a supervisor is doing his or her job while failing to consider that training, for instance, or more importantly, a firm's continual surveillance, will address the issues with which they are concerned.

NASAA puts too much emphasis on a point-in-time, onsite inspection that is but one part of a reasonably designed supervisory program, and they create a presumption that firms would not visit RSLs more frequently. They ignore that, under Rule 3110, firms must justify <u>not</u> inspecting an RSL more frequently than every three years if red flags are present. NASAA assumes an all or nothing approach, failing to consider that a firm with a concern about a supervisor's performance may perform an unannounced, off-cycle visit of their residence in addition to an audit of the supervisor's work product. Firms are also not locked into using the RSL designation for any location. Rule 3110's reasonably designed standard requires them to remove such designation if conditions warrant. NASAA has given short shrift not only to the proposed safeguards and conditions of the RSL, but also the preexisting requirements of Rule 3110.

Were an annual inspection requirement imposed as NASAA would like if the proposal was approved, there would be little incentive to register a supervisor's personal residence as a RSL over an OSJ

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[4] SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (Mar. 19, 2004), https://www.sec.gov/tm/staff-legal-bulletin-17-remote-office-supervision. It is also important to note an onsite visit is <u>not</u> required by the rule; rather, it is based on this guidance.

[5] FINRA even included an exclusion directly in response to NASAA's concerns about new hires unfamiliar with the firm's supervisory systems during their first year of employment. Proposed Rule 3110.19(b)(4), *infra* note 6.

or supervisory branch, as is done in limited circumstances today.[6] Firms facing an equivalent inspection requirement could simply register these residences as such and not be constricted by the RSL's various conditions, nullifying the RSL.

The more likely result is less workplace flexibility for supervisors. Firms facing an exponential increase in office locations with more burden than benefit could not offer workplace flexibility plans. They have limited resources to inspect dozens, hundreds, or thousands of new locations, depending on the firm, particularly when NASAA continues to oppose remote inspections of low-risk locations that would relieve some of the burden. This, in turn, negatively impacts the industry's ability to recruit and retain qualified supervisors and advance the industry's diversity and inclusivity goals, hurting investors. Rule modernization can occur without threatening investor protection, as FINRA proposes.

2. **PIABA Misunderstands the Industry's Workforce Plans**

In its letter, PIABA cites several articles about firms' return to office plans to assert that there is no longer a compelling need for the RSL.[7] In fact, it is as compelling as ever. Every firm listed in their letter, and the thousands of other firms not mentioned, are considering flexibility for their workforces. Hybrid work arrangements for supervisors, which permit them to work from home for one or more days a week, a few days a month, or a certain amount a year, carry regulatory implications that cannot be ignored. PIABA recognizes that such arrangements "would cause major problems" for the industry.[8] They cite an increase in Ponzi schemes and similar investment frauds to argue against the proposal. Yet, most of these frauds do not even involve Commission or FINRA-registered firms or associated persons. Nor is supervision of remote brokers being relaxed by allowing certain supervisory personnel to work from home and perform discrete functions that are already being done on a computer. In citing investment frauds generally, PIABA is misplacing blame and making it more difficult for the industry to recruit the best and brightest supervisory and compliance personnel, who are essential to investor protection. FINRA is not brushing aside investor protection with a proposal that includes safeguards and conditions above and beyond what current rules require.

I appreciate you taking into consideration our additional comments. If you have any questions or require further information with respect to our comments, please do not hesitate to contact me at [redacted].

Very truly yours,

Bernard V. Canepa

Bernard V. Canepa
Managing Director &
Associate General Counsel

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[6] 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. 47257-58 (Aug. 2, 2022), https://www finra.org/rules-guidance/rule-filings/sr-finra-2022-019.

[7] PIABA's letter refences both the RSL and remote inspections pilot proposals but appears to be focused on remote inspections. For clarity's sake, we address their comments as they apply to the RSL proposal.

[8] Supra note 2 at p. 5.