



September 6, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Notice of Filing of a Proposed Rule Change to Adopt Supplemental Material .18 (Remote Inspections Pilot Program) / Release No. 34-95452, File No. SR-FINRA-2022-021; Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) / Release No. 34-95379, File No. SR-FINRA-2022-019

Dear Ms. Countryman:

The American Securities Association¹ (ASA) submits these comments in response to the proposed rule change filed by the Financial Industry Regulatory Authority (FINRA) with the Securities and Exchange Commission (SEC) regarding a pilot program that would allow FINRA members to conduct remote inspections of branch locations, non-branch locations, and office of supervisory jurisdictions (OSJ) (Proposal).

The ASA largely supports the Proposal and appreciates ongoing efforts by FINRA to modernize its rules and adapt to the evolution of workplace practices, particularly in light of the pandemic. Experiences during the pandemic demonstrate that remote inspections can be conducted effectively and that the centralization of many compliance functions for broker-dealers – aided by technology - allows for proper oversight of registered individuals and office locations.

I. Background

The Proposal accurately describes how technology has transformed certain practices within the broker-dealer industry, noting that “widespread advancements in technology and communications in the financial industry have significantly changed the way in which members and their associated persons conduct their business and communicate, including the practices that

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





formed the original bases for an on-site inspection requirement.”² The ASA agrees with FINRA that the remote/hybrid work models that took hold during the pandemic are here to stay and that both regulators and regulated entities should continue to adapt their policies to reflect changes in workplace models. Regulators, including the SEC, have also increasingly embraced remote work models to carry out their mission.³

The Proposal is not the first time FINRA has considered expanded use of remote inspections. In 2017, FINRA proposed a rule that would allow for remote inspections of certain “qualifying offices” subject to certain conditions. While the onset of the pandemic in 2020 delayed the specific proposal, FINRA acted swiftly to adopt rules governing inspections after work-from-home orders were issued across the country. The rule implemented by FINRA during the pandemic (Rule 3110.17) is scheduled to expire on December 31st of this year.

The conditions of the Proposal are largely modeled upon Rule 3110.17 and provides for a three-year “pilot” program for firms to conduct inspections. The pilot program would be subject to a number of important protections, including a prohibition against “high risk” firms from participating in the pilot, a requirement that firms conduct a risk assessment of each location that would be inspected remotely, and that firms establish policies and procedures to account for these risk assessments. Further, the frequency and approach to remote inspections would depend on whether a location is an OSJ, a branch office, or a non-branch location. Firms would have to properly assess compliance needs and risk assessment for each type of location and conduct their inspections accordingly.

II. The Remote Inspection Pilot Program Must Be Considered in Conjunction with FINRA’s Proposal Regarding Supervisory Locations

The three-year pilot will provide FINRA with the necessary data and feedback to determine if a more permanent rule is warranted and whether any investor protection concerns are raised due to increased remote inspections. The ASA generally supports this approach and appreciate FINRA’s efforts to modernize its rulebook.

However, we believe definitions and limitations with respect to FINRA’s recent proposal regarding residential supervisory locations⁴ should be considered alongside the Proposal.

The residential supervisory location proposal would subject certain home offices to inspections every three years if associated persons at that home office engage in specified supervisory

² Proposal at 2

³ <https://www.cnbc.com/2022/08/26/cnbc-exclusive-cnbc-transcript-sec-chair-gary-gensler-speaks-with-cnbc-squawk-on-the-street-today.html>

⁴ <https://www.sec.gov/rules/sro/finra/2022/34-95379.pdf>





activities. This would potentially include OSJs, field supervisors, field auditors, trade principals, and others that work remotely and may be subject to inspection by the proposal.

These supervisory employees commonly are permitted to work hybrid schedules, such as four days in the office and a single day per week from home. Including their homes as residential supervisory locations under these circumstances would escalate the number of audits required beyond firms' resources available for audits. In addition, we note that most supervisory employees perform remote work through a computer that logs into their primary office location and no records are stored outside of that system.

While the ASA understands the impetus for inspection of such offices, we are concerned about the large number of homes this could encompass and whether firms have the adequate personnel and capability to conduct in-person inspections every three years. Many of these home offices could fall under the pilot program of the Proposal and not be subjected to in-person inspections right away. We therefore encourage FINRA to synchronize the timing of both of these proposals so that the pilot program would extend to residential supervisory locations that could be covered by FINRA's proposed definition.

III. Conclusion

The ASA appreciates FINRA's ongoing attention to evolving workplace practices and the need to modernize certain rules governing inspections of branch and non-branch locations. We look forward to working with FINRA and the SEC on these initiatives as they move forward.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association

