



September 06, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: ***Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)***

Dear Ms. Countryman:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) on its approval of the proposed rule change to adopt new Supplemental Material .18 (Remote Inspections Pilot Program) as set forth in SR-FINRA-2022-0121 (the “Proposal”).

I. Fidelity Strongly Supports the Proposal

Fidelity strongly supports the Proposal and has previously advocated² for changes to the inspection requirements of offices of supervisory jurisdiction, branch offices and non-branch locations under FINRA Rule 3110. We greatly appreciate FINRA’s willingness to evolve its longstanding in-person inspection requirements based on lessons learned during the COVID-19 pandemic, evolving technology and current and future workforce arrangements.

The proposed pilot program is not a permanent rule and is structured in a way to gather relevant information that will help guide supervision and inspections for years to come. The need for remote inspections is no longer due only to a public health crisis. There is a longer-term need for inspections to occur in a way that supports how firms have been and are going to continue to work. Business activities are typically conducted, and books and records are maintained, exclusively through a firm’s electronic systems, which are subject to ongoing supervisory and surveillance reviews which can be conducted remotely, and in many cases occur automatically and in real-time. Moreover, employees want to work remotely, and this technology now supports this shift. On-site inspections of branch offices and unregistered offices result

¹ Fidelity is one of the world’s largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, National Financial Services LLC, and Fidelity Distributors Company LLC.

² See [FINRA Retrospective Rule Review: Lessons From the COVID-19 Pandemic, Regulatory Notice 20-42 comment letter](#) and [FINRA Temporarily Extend Relief to Allow Remote Inspections under FINRA Rule 3110: File Number SR-FINRA-2022-001](#).



in expenses (i.e., travel and accommodations) and productivity losses, particularly if each employee's home must be visited, that are disproportionate relative to the supervisory benefits realized. In fact, there is often very little, if anything, to physically review when conducting on-site inspections of these offices.

It is, furthermore, not at all apparent that in-person inspections are the most effective way to detect misconduct. Given the reliance on technology from both the firm and its customers, firm personnel who would attempt to evade regulatory responsibilities would likely do so through technological means. Discovery of this type of behavior would be more likely to be identified using technology than during a physical inspection of a branch office or home. The resources currently used, and additional resources that would be needed, to conduct on-site inspections of certain locations could be better deployed reviewing higher risk activities.

II. Practical Experience and Data Supports the Proposal: Pre-Pandemic vs. Pandemic Inspection Findings

As we have referenced in prior comment letters, Fidelity strongly supports the Proposal. Our practical experience and data support the conclusion that remote inspections are just as effective as on-site inspections. Comparing findings from the nearly 900 on-site branch inspections we conducted during the pre-pandemic period (2017 – 2019) to the nearly 600 remote branch inspections conducted during the pandemic (March 2020 – December 2021), the findings were both comparable and de minimis. For both periods, the findings included sales literature past expiration date, checks accepted that ultimately would not be processed when submitted, and miscellaneous items stored in the branch office safe. A further benefit of remote inspections we found is that video conferencing allows for a detailed review and discussion of inspection results with branch office managers.

With respect to non-branch office inspections, during 2019, Fidelity inspected over 300 private residences that were exempt from branch office registrations under FINRA's branch office definitions and conducted over 600 remote inspections during the pandemic (March 2020 – December 2021). The inspection findings during 2019 and the remote inspections conducted during the pandemic produced a similar finding rate of less than three percent, the vast majority of which involved a single piece of sales literature that was past the expiration date held by Fidelity employees who meet with employees of institutional clients at those clients' offices.

For employees working from home who do not have these in-person client relationships, the finding rate during this period was nearly zero. These inspections include a virtual walk-around of the location and a conversation with the representative, using Zoom or other video conference tools. These tools have afforded supervisors to both assess the suitability of the location for the work being performed and the demeanor and engagement of the employee. Physical on-site examinations in these instances have provided no additional supervisory benefit over and above off-site technology-assisted inspections.

The inspection of a physical location – either in person or remotely – is only one of many digital tools our supervisors use to supervise. Supervision occurs on an ongoing and consistent

basis through electronic means. For example, through the use of technology, supervisors can review outside business activity requests, distribution of marketing materials and customer documents, employee trading activity and client communications. All customer files are maintained electronically including records of appointments, meeting notes, and account documents, and can be accessed remotely by a supervisor at any time. Supervisors can drop-in on calls and zoom meetings as necessary. Indeed, other than inspections, there are currently no other required supervisory tasks cannot be performed remotely electronically.

III. Conclusion:

We urge the SEC to consider this Proposal in conjunction with FINRA's recently filed proposal concerning Residential Supervisory Locations (SR-FINRA-2022-019) and approve both proposals with the same effective date. The Remote Inspections Pilot Program is a reasonably designed pilot that provides regulators the opportunity to assess the success of remote inspections in a structured manner and use the findings to inform updates to outdated guidance that does not reflect significant changes in technology and the workforce. Advances in communications and other technology, and other firm systems, including those used for remote supervision and surveillance, are substantial enough to warrant an even broader review of the definitions of branch office, office of supervisory jurisdiction, and the inspection requirements that are attached to those designations, many of which we believe are obsolete.

We recognize that, as an industry, we will need to continue to be vigilant in evolving our supervision and surveillance as new products, services and technologies arise. That said, it is far from clear that more in-person inspections are the right response to the changes we are seeing in our industry. As client engagement continues to migrate to electronic interactions – particularly with younger investors who favor this mode of communication – we expect to find any employee misconduct will migrate there as well. For example, it is not at all obvious that the most effective way to identify the use of personal devices and email accounts to communicate about securities business matters is an in-person inspection. This type of violation is more likely to be found using technology.

We are confident that this pilot program will show results similar to those Fidelity has observed during the pandemic, and demonstrate that remote inspections, in addition to existing oversight and surveillance, are effective at protecting consumers and ensuring industry integrity. Absent this change, when the temporary inspection relief under FINRA Rule 3110.17 expires at the end of the year, firms will need to make the difficult choice of either forcing their workforce back in the office, thereby risking loss of key talent in a difficult labor market, or exponentially increasing compliance burdens by conducting on-site inspections of thousands more private residences. Notwithstanding technological capabilities and even size, we would be required to significantly increase staff to conduct such a substantial and sudden increase in the volume of on-site residential inspections, and we anticipate enormous challenges recruiting, hiring, and training new exam staff needed to comply with the pre-pandemic Rules.

If the Staff requires additional time to review the proposals, we request an extension of the relief provided under FINRA Rule 3110.17. We appreciate that FINRA and the SEC have


always been willing to work with the industry to evaluate and consider changes to rules, as evidenced by RN 20-08 and the previous Rule Extensions.

Fidelity has always placed strong emphasis on investor protection and supervision of its associates' activities. We are happy to provide further information, participate in any direct outreach efforts the Division undertakes, or respond to questions you may have about our comments.

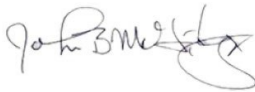
Sincerely,



Gail Merken
Chief Compliance Officer
Fidelity Brokerage Services LLC



Janet Dyer
Chief Compliance Officer
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John McGinty
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Fidelity Distributors Company LLC

CC: Robert Cook, FINRA
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