

September 6, 2022

VIA rule-comments@sec.gov

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N. E.
Washington, D.C. 20549

RE: File No. SR-FINRA-2022-021: Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)

Dear Ms. Countryman:

I provide these comments to the Securities and Exchange Commission (“Commission”) from the perspective as a Chief Compliance Officer of a retail, small firm broker-dealer. I have worked in the financial services industry for over 20 years, actively participate in industry events, and frequently discuss regulatory rules and firm best practices with other firm and industry professionals.

I must acknowledge the significance of the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) recognition for the need and initiative to modernize the FINRA rule book. The extensive outreach, particularly over these past few years, and the engagement efforts by FINRA staff with stakeholders is a critical step forward to align regulations in our industry to keep pace with the accelerated rate of evolution in our everyday lives. As Commission Chair Gensler has said, guiding principles shaping the SEC’s agenda for 2022 are: continuing to drive efficiency in our capital markets and modernizing our rules for today’s economy and technologies.¹

Not an ‘All or Nothing’

When I’ve asked other firm compliance professionals and consultants about their plans to use in-person or remote inspection methods, their responses are uniformly the same, “It depends”. They know it depends on a lot of factors related to the branch, it’s operations, unique circumstances, risks, red flags or absence thereof, low business activity and results of previous inspections. Many have conducted inspections in-person this year. Not because they had to, but because they wanted to. Some conducted inspections remotely because they needed to and were unable to visit in-person. We also shared our methods and a few tips. Like other processes, the more often that firms conduct inspections remotely, the better they will get. Best practices will emerge, like they always do.

¹ See SEC, Chair Gensler, Prepared Remarks: “Dynamic Regulation for a Dynamic Society” Before the Exchequer Club of Washington, D.C. (January 19, 2022) <https://www.sec.gov/news/speech/gensler-dynamic-regulation-20220119>

In a recent industry article, a concern was raised regarding the remote inspection pilot and “that whatever permanent regulatory changes come in this area, there’s no doubt they will require a greater use of technology, which means an even greater investment in tech tools. For smaller firms already at a scale disadvantage, this will be an additional motivation to be acquired, merge or to exit the business.”²

I can tell you right now, that what is creating an anti-competitive environment and driving smaller firms out of business is the continuing roll out of significant regulations imposed by many different regulatory bodies, that apply to the same firm, the same employees, and their customers. For example, in 2020 there was Regulation Best Interest and Form CRS, in 2021 the implementation of the Consolidated Audit Trail (“CAT”), in 2022 the full adoption of the Department of Labor’s Prohibited Transaction Exemption 2020-02, and for dual registrant investment advisor firms, there is the upcoming new SEC Marketing Rule. (This is a whole other conversation.) It is not enabling small firms to conduct inspections remotely that will be forcing them out of business. The methods and tools to conduct inspections in a remote capacity can be better described as a creative approach rather than a high-priced expenditure³. Again, the inspection method best suited for each respective firm, the branch office, and for the inspector is dependent on many factors and conditions. Again, this is where best practices will evolve.

Modern Methods for Branch Inspections

[A comment letter submitted by NASAA](#)⁴ included examples of misconduct findings by state regulators. This comment letter also raised a concern whether ‘robust remote inspection technologies are cost effective for smaller firms’. From a small firm perspective, the knowledge of misconduct findings at other firms can be extremely valuable for branch inspectors. This knowledge provides branch inspectors with additional areas of risk that they might never have thought of. While unfortunately it is impossible to detect and prevent all misconduct, even with in-person inspections, this knowledge can help branch inspectors assess risk of similar misconduct against a respective firms’ policies, procedures, operations structure, and employee composition and formulate reasonable inspection protocols. Below are a few examples of modern tools that firms could use to help prevent or detect the mentioned risks (*most of these tools are free to use or are related to a common type of industry vendor*):

- 1) State regulators have found undisclosed outside business activities and related companies when conducting in-person inspections, as well as unregistered persons conducting business in remote branch locations.

² See InvestmentNews, *New regulations for the new reality* (Aug. 22, 2022),

<https://www.investmentnews.com/new-regulations-monitor-remote-work-for-the-new-reality-225579>.

³ A list of resources and tools for firms is posted on FINRA’s PEER-2-PEER COMPLIANCE LIBRARY, through the FINRA Gateway. Refer to “XML Branch Inspection Report Template - Remote or Onsite” and “XML Remote Branch Inspection Resources”.

⁴ Comment letter for Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) [Release No. 34-95452; File No. SR-FINRA-2022-021] Aug. 23, 2022 Melanie Senter Lubin, North American Securities Administrators Association (“NASAA”), Inc. <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021.htm>

- 2) State regulators have overheard sales pitches for securities not approved by the firm.

Modern Methods

- a) *Set Google alerts for all employees which can be automatically emailed to a supervisor or branch inspector as the alerts are triggered.*
- b) *Add social media feeds to your email archiving provider for sample reviews.*
- c) *Educate operations staff on approved products and outside business activities. Encourage operations staff to notify compliance personnel, which can be anonymous, should they come across paperwork or questions from clients regarding a product or activity that is not on the firm's approved list. Often operations staff are unaware of what is or is not approved, but they are the ones typically processing paperwork or assisting clients with the movement of funds for investments.*
- d) *Some state corporation commission websites, like Florida's, enable a free online public search of a person's name and a list of entities related to that name.*

- 3) State inspectors have found unsecured checks and client documents at remote locations, as well as an instance in which an associated person directed client mail to a home address rather than a firm address.

Modern Methods

- a) *Branch inspectors can use a smart phone to have a live video call with an on-site employee to direct him/her around the branch, open drawers and closets. See what is locked or isn't.*
- b) *Include where checks should be mailed for processing in firm materials provided to clients.*
- c) *For employees working from remote locations, their email signature should include the address of their OSJ and specifically state where 'checks should be mailed to...' for deposit.*
- d) *Through an email archiving provider, create a Group and add all employees' home address ["1234 Street Name"]. Conduct a search of this group for any indication of a personal address included in an email.*
- e) *Vendor tools: FedEx.com has an Account Administrative reporting tool. With admin level access, a report can be exported of all shipments. Branch inspectors can review the reports for indications of shipments sent to or from a location that they shouldn't be.*

- 4) State regulators have found unsecured laptops in violation of firm policies.

Modern Tools

- a) *Request firm's Information Technology vendor or staff ("IT") to connect to laptops to confirm the laptops meet the firm's IT requirements. IT should be able to see all devices connected to the firm's network or to the router located in each branch. IT can establish administrative privileges to require login protocols and use of Multi Factor Authentication ("MFA") methods.*

- 5) State regulators have also found physical objects during in-person inspections that are unlikely to be captured through technological monitoring, such as fake degrees, dated client service awards, and stale sales literature.

Modern Tools

a) *Branch inspectors can use a smart phone to have an unannounced, live video call with an on-site employee to direct him/her around the physical location and inspect aspects of interest to the branch inspector. Use such method first to determine if any red flags are found and escalate inspection procedures if warranted, such as an unannounced on-site branch office visit. (Risk based assessment)*

6) A state regulator found an associated person whose diminished capacity was being compensated for and hidden by sales assistants.

Modern Tools

a) *Interviews with the employees is usually a component of a branch inspection, whether in-person or over the phone. The industry's increased focus on investor's diminished capacity issues has spawned a plethora of training resources for firm employees. Branch inspectors who undergo training to recognize the signs of diminished capacity can apply those evaluations to associated persons to spot red flags and better identify when something seems "off".*

FINRA Rule 3110(c) Internal Inspections

The fact that we are commenting on a rule proposal to allow firms to conduct inspections in a specific method is perplexing. The existing language of *FINRA Rule 3110(c) Internal Inspections* is sound. It is principle and risk based and does not specify a methodology. See excerpt below:

(1) Each member shall conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review shall be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable FINRA rules. Each member shall review the activities of each office, which shall include the periodic examination of client accounts to detect and prevent irregularities or abuses. Each member shall also retain a written record of the date upon which each review and inspection is conducted.

A comment letter submitted for the Rule 3110 Supplementary Material .19 ([Residential Supervisory Location](#)) summarizes the history of Rule 3110 (Previously NASD Rule 3010) and how the in-person inspection method was imposed on firms through interpretive letters and guidance – of which firms are held to and examined against⁵. The NASAA comment letter, previously referenced, questioned FINRA's process for proposing the Remote Inspection Pilot Program⁶ as "landmark changes to FINRA member firm supervision responsibilities without an adequate administrative record". However, these arguments could be applied to the very conditions that established the in-person/on-site interpretation in the first place - without going through the rulemaking process. Yet, here we are.

⁵ Comment letter to Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) [Release No. 34-95379; File No. SR-FINRA-2022-019] Aug. 19, 2022 Peggy E. Chait, Managing Director, Integrated Solutions and Howard Spindel, Senior Managing Director, Integrated Solutions. <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019.htm>.

I am in support of the Remote Inspections Pilot Program if it is what the Commission, FINRA and other interested regulatory bodies need to move firms forward and allow reasonable, risk-based inspection processes. Now, more than ever, small firm compliance staff need to be as efficient as possible. Time spent away from our desks, traveling unnecessarily and without justification means that attention is moved from higher risk areas, such as the constant combatting cyber criminals to prevent their access to client funds.

A handwritten signature in black ink, appearing to read "J Szaro". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Jennifer L. Szaro, CRCP
Chief Compliance Officer