



**FINANCIAL
SERVICES
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VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

September 6, 2022

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: 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 Secretary:

On July 28, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to adopt a voluntary, three-year remote inspection pilot program to allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such office or location, subject to specified terms. On August 15, 2022, the SEC published this proposed rule change in the Federal Register for public comment.¹

We appreciate FINRA’s review of its rules with an eye toward modernization and support its proposal to adopt a pilot program to collect additional data concerning remote inspections. We agree with FINRA’s assessment that a decentralized, flexible, hybrid work model will likely endure, even as pandemic concerns moderate, and that firms’ investments in technology to effectively perform compliance functions presents an opportunity to review the way broker-dealers are efficiently deploying resources to support investor protection. The pilot program outlined in the Rule proposal is well-suited to collect structured data from participants to assess the overall impact that the use of remote inspections has on members’ supervisory systems now that work conditions are normalizing after navigating pandemic-related restrictions. While building off temporary Rule 3110.17, currently in effect, the proposal employs appropriate safeguards and imposes additional requirements for regulators to gather further information without compromising investor protection.

Background on FSI Members

FSI is an advocacy association comprised of members from the independent financial services industry. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than

¹ 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) available at <https://www.federalregister.gov/documents/2022/08/15/2022-17428/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a>

160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.² These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (“IBD”).³ FSI’s IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

FSI members make substantial contributions to our nation’s economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.⁴

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

Discussion

In proposing this pilot program, FINRA explained that, since the time Rule 3110(c) was interpreted to require on-site inspections of branch offices and non-branch locations, the industry has changed significantly based on widespread advances in technology (e.g., centralized electronic recordkeeping), which has assisted in supervising associated persons who work in outlying locations and offices. FINRA notes that the necessity of residential work locations at the onset of the Covid pandemic accelerated, in both the private and public sectors, the adoption of certain technologies and reshaped communication with heavier reliance on electronic means including email, messaging platforms, and video conferencing technologies. As a result of the pandemic, FINRA initially issued temporary relief to address certain regulatory requirements affected by the necessary shift to remote work, including allowing for the use of remote inspections, and, more recently, has reviewed aspects of Rule 3110 that may benefit from modernization.

FSI appreciates the opportunity to provide comments in response to FINRA’s proposed rule. Given FSI members’ business model, our members have generally operated in a decentralized structure, with advisors serving clients in the communities where they live across the country, including rural America. During the pandemic, IBD firms adapted their supervisory functions and inspections to rely on technology and remote communications more heavily because many advisors were working from home. While many IBD firms, even prior to the pandemic, employed technology as part of inspection programs, with a considerable amount of pre-work being done prior to arriving at a location on-site, the pandemic prompted IBD firms to optimize and expand on these capabilities. For calendar year 2022, many members report that they will have employed a

² Cerulli Associates, Advisor Headcount 2016, on file with author.

³ The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term “investment adviser” or “adviser” in this letter is a reference to a firm or individual registered with the Securities and Exchange Commission (SEC) or state securities division as an investment adviser.

⁴ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI’s Members (2020).

combination of remote inspections (observing the requirements established by FINRA's temporary relief) and in-person inspections (generally occurring during times of lower community spread as Covid transmission rates and health-related concerns fluctuated during this year). These experiences indicate that IBD firms may benefit from a program allowing remote inspections under circumstances that would not undermine investor protection, achieved through the safeguards and requirements outlined in the proposed pilot program.

Pilot Program Safeguards and Requirements: FSI believes that the safeguards, requirements, and specific documentation obligations outlined in the proposal ensure that investor protection is not compromised for participating firms. As a threshold matter, FINRA is proposing to exclude some member firms and locations from participating in the program by providing a list of restrictions that will eliminate (or restrict) a firm's ability to participate in this pilot. The required risk-based assessment, and related documentation requirements, builds on already issued FINRA guidance and FINRA indicated that it expects higher risk factors at a particular location to result in an on-site visit at that location. A risk-based approach supports the optimal allocation of firms' compliance resources. The proposed rule's specific documentation requirements and written supervisory procedures tailored to the pilot program, including to supervise its outlined risk-based approach, also serve to address any investor protection concerns.

Pilot Program Flexibility and Uniform Data Collection: FSI believes the flexibility built into this program provides firms who may conduct only a small number of remote inspections the ability to participate, which will make the pilot well positioned to obtain data from across a representative sample of firm business models and sizes. In addition, this structured program allows for the collection of uniform data, which will enable regulators to better assess the strengths and weaknesses of different inspection approaches.

Regulatory Clarity and Compliance Planning: As FSI members prepare for 2023, regulatory clarity concerning inspection obligations is needed so that compliance professionals have adequate time to plan. As a practical matter, member firms may need to adjust resources, hire and train additional personnel, and modify travel budgets during the fourth quarter of 2022 to transition to a revised regulatory framework concerning remote inspections in 2023. For the reasons outlined above, FSI supports the approval of FINRA's remote inspections pilot program as soon as practicable.

Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with the SEC and FINRA on this and other regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at [REDACTED]

Respectfully submitted,



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