



September 30, 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: *Supplemental Comment Letter on Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision); File No. SR-FINRA-2022-021; Release No. 34-95452*

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“**SIFMA**”)¹ appreciates this opportunity to provide the Securities and Exchange Commission (the “**Commission**” or “**SEC**”) with supplemental comments in response to the Financial Industry Regulatory Authority Inc.’s (“**FINRA**”) File No. SR-FINRA-2022-021: Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) (the “**Pilot Proposal**”).² This letter is intended to supplement SIFMA’s previously filed comments on the Proposal and FINRA’s residential supervisory location proposal (“**RSL Proposal**”).³

Some comments filed on the Pilot Proposal and the RSL Proposal have encouraged the Commission to reject both proposals because FINRA has not provided sufficient justification for the proposals, nor has FINRA gathered sufficient information and facts to demonstrate that such changes are warranted. SIFMA believes that the purpose of any pilot program is to collect precisely this type of information so that

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 FINRA, *Proposed Rule Change to Adopt Supplementary Material. 18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)*, File No. SR-FINRA-2022-021, 87 Fed. Reg. 50144 (Aug. 15, 2022), <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-021>.

³ See generally, SIFMA’s Comments on the Pilot Proposal, <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138365-308398.pdf>, and RSL Proposal, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137268-307822.pdf>.

stakeholders can make informed decisions on regulatory modernization proposals. As Chair Gensler recently stated:

As markets have evolved, our rules have continued to evolve as well. That helps us maintain the gold standard. That helps us sustain our geopolitical edge on the world stage. I think we should do everything we can to maintain and enhance that gold standard of our capital markets. [We can maintain this gold standard by stakeholders working] with the Commission and staff both to drive efficiencies in our capital markets and *to modernize our rule sets for today's markets and technologies as we execute our mission: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation*. We must remain vigilant to opportunities to enhance competition, transparency, fairness, and resiliency.⁴ [emphasis added].

Maintaining our world leading capital markets and the investor protection focused regulatory regime governing our markets requires vigilance and a dynamic and open dialogue among its various stakeholders. The Pilot Proposal and RSL Proposal represent this type of working relationship recently highlighted by Chair Gensler.

The use of a data-driven approach to regulatory modernization has been a touch-stone of previous executive branch administrations. President Barack Obama's 2013 management agenda, for example, called for "experimentation and innovation" to produce a "smarter, more innovative, and more accountable government."⁵ President Biden launched a "Year of Evidence for Action to Fortify and Expand Evidence-Based Policymaking" that "[s]trengthen[s] and develop[s] new strategies and structures to promote consistent evidence-based decision-making inside the Federal Government; and [i]ncrease[s] connection and collaboration among researchers, knowledge producers and decision makers inside and outside of the Federal Government."⁶

The Foundations for Evidence-based Policymaking Act of 2018 (also referred to as the Evidence Act) was established to advance evidence-building in the federal government by improving access to data and expanding evaluation capacity.⁷ Approving the Pilot Proposal will further this congressional mandate.

In particular, the Pilot Proposal builds off a long line of previous pilot programs in other areas where the Commission, FINRA, and other self-regulatory organizations ("SROs") have used pilot programs to gather information to educate their regulatory modernization decisions. For example, the Commission, the Commission's advisory committees (such as the Equity Market Structure Advisory Committee), FINRA, and SROs have used pilot programs to evaluate possible regulatory modernization

⁴ See Testimony of Gary Gensler, SEC Chair, Before the United States Senate Committee on Banking, Housing, and Urban Affairs (Sept. 15, 2022).

⁵ See, <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2013/m-13-17.pdf>.

⁶ See, <https://www.whitehouse.gov/ostp/news-updates/2022/04/07/fact-sheet-biden-harris-administration-launches-year-of-evidence-for-action-to-fortify-and-expand-evidence-based-policymaking/>.

⁷ See, <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>. See also, <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>.

regarding tick size,⁸ access fees,⁹ transaction pilot fee,¹⁰ retail liquidity,¹¹ large arbitration cases,¹² and corporate bond block trade dissemination.¹³ The Office of the Investor Advocate at the Commission has used a variety of approaches—nationally representative surveys, behavioral choice experiments, and large qualitative studies—to advance its mission of providing evidence to support investors and Commission deliberations.¹⁴

Based on SIFMA’s research, it appears that none of the above referenced pilot programs required the Commission, FINRA, an SRO, or other party to collect the precise information contemplated by the pilot program *prior to* approving and implementing the pilot program. SIFMA also could not find any comment letters from stakeholders articulating such a requirement.¹⁵

Various types of pilot programs are used by other entities beyond the Commission and FINRA.¹⁶ SIFMA could give no examples where these pilot programs were only initiated after collecting the precise information contemplated by the pilot program as justification for approving and initiating the pilot program. For example, in 2020 “NASAA announced that it is working with FINRA, with input from industry regulators, to accelerate the delivery of online licensing testing services that will be administered remotely by test delivery provider Prometric. *NASAA is currently conducting a pilot of the online testing service*, and expects to launch the service on a limited basis in the near future, starting with SIE, Series 6, Series 7, Series 63, and Series 66.”¹⁷ [emphasis added]. NASAA also previously has conducted a pilot survey to better understand cybersecurity practices of state-registered investment advisers.¹⁸ The

⁸ See, <https://www.sec.gov/rules/sro/nms/2014/34-73511.pdf>.

⁹ See, <https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf>.

¹⁰ See, <https://www.sec.gov/news/press-release/2018-298>.

¹¹ See, <https://www.sec.gov/rules/sro/nyse/2018/34-83454.pdf>.

¹² See, <https://www.finra.org/media-center/news-releases/2012/finra-launches-pilot-program-large-arbitration-cases>.

¹³ See, FINRA Regulatory Notice 19-12, <https://www.finra.org/rules-guidance/notices/19-12>.

¹⁴ See generally, The Regulatory Review, How Federal Agencies Have Used Rigorous Policy Pilots to Learn, Colleen Chien (Dec. 6, 2019), <https://www.theregreview.org/2019/12/06/chien-federal-agencies-used-rigorous-policy-pilots-learn/>. See also, Brian Scholl, Principal Economic Advisor and Senior Economist, U.S. Securities and Exchange Commission Office of the Investor Advocate Chief Architect POSITIER (Policy Oriented Stakeholder and Investor Testing for Innovative and Effective Regulation, <https://www.law.upenn.edu/live/files/9539-presentation-slides-brian-scholl>).

¹⁵ See, e.g., NASAA Statement on FINRA Arbitration Pilot Program, <https://www.nasaa.org/5655/nasaa-statement-on-finra-arbitration-pilot-program/> (stating support for a FINRA arbitration pilot program and not expressing a requirement that pilot-related data be collected prior to approving the pilot program). See also, various comment letters from Healthy Markets, <https://healthymarkets.wpengine.com/wp-content/uploads/2018/04/12-22-14-HM-letter-data-driven-regulation.pdf> (tick size pilot); <https://healthymarkets.wpengine.com/wp-content/uploads/2018/04/12-23-14-HM-letter-Access-Fee-Pilot-program.pdf> (access fee pilot); <https://healthymarkets.wpengine.com/wp-content/uploads/2018/06/05-24-18-HM-letter-Transaction-Fee-Pilot.pdf> and <https://healthymarkets.wpengine.com/wp-content/uploads/2018/07/07-06-18-HM-letter-Transaction-Fee-Pilot.pdf> (transaction fee pilot); and <https://healthymarkets.wpengine.com/wp-content/uploads/2018/12/NYSE-2018-RLP-Comment-Letter-12-20-18.pdf> (retail liquidity pilot),

¹⁶ See generally, Colleen V. Chien, *Rigorous Policy Pilots: Experimentation in the Administration of the Law*, 104 Iowa Law Review 2313 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312696. See also, Colleen Chien, The Regulatory Review, *How Federal Agencies Have Used Rigorous Policy Pilots to Learn*, (Dec. 6, 2019), <https://www.theregreview.org/2019/12/06/chien-federal-agencies-used-rigorous-policy-pilots-learn/>.

¹⁷ See, <https://www.mcguirewoods.com/client-resources/Alerts/2020/4/update-6-financial-regulators-sros-continue-providing-covid-19-related-relief>.

¹⁸ See, <https://www.nasaa.org/industry-resources/investment-advisers/nasaa-cybersecurity-report/>.

Department of Transportation utilizes pilot programs to evaluate possible regulatory changes and states in its rules “[a] pilot program is intended for use in collecting specific data for evaluating alternatives to the regulations. . . .”¹⁹ FinCEN proposed a pilot program for sharing suspicious activity reports with foreign affiliates.²⁰

Conclusion

SIFMA appreciates the opportunity to provide this supplemental comment on the Pilot Proposal. Given that off-site inspections have been working well – nothing to the contrary has been expressed by regulators, we think it is prudent for the SEC to support FINRA’s proposed rule relating to both its Pilot Proposal and RSL Proposal. We appreciate you taking into consideration our comments and we look forward to engaging with you on this effort. If you have any questions or require further information with respect our comments, please do not hesitate to contact the undersigned.

Very truly yours,

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¹⁹ See, 49 CFR § 381.400 (2022), <https://www.law.cornell.edu/cfr/text/49/381.400>

²⁰ See, <https://www.federalregister.gov/documents/2022/01/25/2022-01331/pilot-program-on-sharing-of-suspicious-activity-reports-and-related-information-with-foreign>.