



**FINANCIAL  
SERVICES  
INSTITUTE**

VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
FIRMS AND INDEPENDENT  
FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

December 7, 2022

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

Re: SR-FINRA-2022-021: Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

Dear Secretary:

On November 16, 2022, the Securities and Exchange Commission (“SEC” or “Commission”) published an Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision).<sup>1</sup> Earlier this year, on July 28, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the SEC 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.<sup>2</sup> Approximately thirty comments were submitted, including our comment.<sup>3</sup> We appreciate the opportunity to comment on the SEC’s November 16, 2022 Order, and we continue to support FINRA’s proposed Remote Inspections Pilot Program for the reasons contained in our earlier letter and for the additional reasons outlined below.

### **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

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<sup>1</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove 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/2022/11/16/2022-24958/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-instituting>

<sup>2</sup> 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>

<sup>3</sup> FSI Comment on 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), available at <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138367-308400.pdf>

part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.<sup>4</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (“IBD”).<sup>5</sup> 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.<sup>6</sup>

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**

For calendar year 2022, many members report that they employed a combination of remote inspections (observing the requirements established by FINRA’s temporary relief) and in-person inspections (frequently performed during times of lower community spread as Covid-19 transmission rates and health-related concerns fluctuated during 2022). Members have found success using technology to assist in completing inspections, leveraging video conferencing tools, email and document review (including using secure websites to obtain scanned documents), and using publicly available searches, for example, to review for any undisclosed outside business activities. Given FSI members’ business model, our members have generally operated in a decentralized structure and were particularly well-positioned in advance of the pandemic to pivot and adapt supervisory functions and inspections to rely on technology and remote communications to enhance the effectiveness of their supervision programs. Many IBD firms, even prior to the pandemic, employed technology as part of their supervision process. For example, a considerable amount of pre-work was conducted prior to arriving at a physical location to perform an office inspection. The pandemic prompted IBD firms to optimize and expand on these already well-tested and proven technologies to enhance their supervision capabilities. As such, firm supervisors were already effectively performing many essential tasks remotely. FSI believes that the criteria, safeguards, and requirements established in the Remote Inspections Pilot Program, for those who voluntarily select to participate, will continue to support investor protection. Many of the comments submitted on the proposed Remote Inspection Pilot Program specifically note that while using remote inspections since the onset of the Covid-19 pandemic, no significant departures from pre-pandemic

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<sup>4</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

<sup>5</sup> 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.

<sup>6</sup> Oxford Economics for the Financial Services Institute, The Economic Impact of FSI’s Members (2020).

inspection results have occurred.

In addition to the information and data already provided through comments on the Remote Inspections Pilot Program proposal, the Pilot Program itself aims to collect additional, uniform data for further regulatory review. FINRA and the SEC have historically used pilot programs to collect data to allow for further review and study. For example, the SEC, in describing the Tick Size Pilot noted “[t]he data collected from the pilot will be used by the SEC, national securities exchanges and FINRA to assess whether wider tick sizes enhance the market quality of these stocks for the benefit of issuers and investors—such as less volatility and increased liquidity.”<sup>7</sup> FINRA’s three-year voluntary pilot program, with the investor protection safeguards built into the program’s proposal, is well-positioned to facilitate the collection of additional information and data for study by the regulators. We continue to support the SEC’s and FINRA’s efforts to modernize securities rules and regulations to reflect technological advances and an evolution to a geographically decentralized work force model.

### **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,



David T. Bellaire, Esq.  
Executive Vice President & General Counsel

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<sup>7</sup> SEC Investor Alert: Tick Size Pilot Program – What Investors Need To Know (Oct. 3, 2016), available at [https://www.sec.gov/oiea/investor-alerts-bulletins/ia\\_ticksize.html](https://www.sec.gov/oiea/investor-alerts-bulletins/ia_ticksize.html); see also SEC Regulation SHO — Pilot Program (Aug. 5, 2005), available at <https://www.sec.gov/spotlight/shopilot.htm> (noting that the “Pilot will allow the Commission to obtain data on the impact of short selling in the absence of a price test.”)