



December 7, 2022

Via E-Mail

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**Re: File No. 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:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the Securities and Exchange Commission's ("SEC") 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 3110.² On July 28, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the SEC a proposed rule change that, if adopted, would add new Supplementary Material .18 ("SM.18") to FINRA Rule 3110 (Supervision) (the "Proposed Rule"). SM.18 would adopt a voluntary, three-year remote inspections 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.³

BACKGROUND

On September 6, 2022, the Committee submitted a comment letter supporting the Proposed Rule. The Committee's comment letter noted that the Proposed Rule took a measured approach, with appropriate guardrails and restrictions around the member firms, and the specific offices of member firms, that would be allowed to participate in the remote inspections pilot program.⁴ The Committee is aware that the SEC has received comments, particularly from the North American Securities Administrators Association, Inc. ("NASAA") that do not support adoption of the Proposed Rule.⁵ NASAA's objections rest, in part, on what the Committee believes is the

¹ The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

² See Securities Exchange Act Release No. 34-96297 (Nov. 10, 2022) 87 FR 68774 (Nov. 16, 2022) (File No. SR-FINRA-2022-021), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-16/pdf/2022-24958.pdf>.

³ See Securities Exchange Act Release No. 34-95379 (August 9, 2022) 87 FR 50144 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-019), 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>.

⁴ The Committee's September 6, 2022 comment letter to the Proposed Rule is posted at <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138362-308395.pdf>.

⁵ NASAA's August 23, 2022 comment letter to the Proposed Rule ("NASAA's Comment Letter") is posted at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137298-307861.pdf>.

inaccurate foundation that FINRA has not offered a “robust basis” or “sufficient justification[]” for the Proposed Rule.⁶

COMMITTEE COMMENTS

The Committee believes that NASAA’s objections are unfounded. In its Notice of Filing of the Proposed Rule (the “Notice”), FINRA noted that widespread advancements in technology and communications in the financial industry have changed the way FINRA members and their associated persons conduct their business.⁷ These advancements have resulted in firms “turning to new and innovative regulatory tools such as artificial intelligence, natural language processing, and robotics process automation, among others, to strengthen their compliance programs.”⁸

In light of significant industry changes brought about by the COVID-19 pandemic and notable technological advancements, FINRA made a deliberate decision to initiate this rulemaking following its consideration of comments in response to FINRA Regulatory Notice 20-42, in which FINRA sought feedback from industry stakeholders (including NASAA and the Committee) as to a number of industry changes prompted by the COVID-19 pandemic.⁹ FINRA acknowledged in the Notice that based on feedback from member firms, it understood that many broker-dealers are moving towards a blended workforce model, with employees working both on-site in a conventional office location and remotely in a private residence.¹⁰ FINRA further acknowledged that firms have successfully developed and utilized technological tools to facilitate their supervisory practices, including surveillance systems, electronic tracking programs or applications, and electronic communications.¹¹

NASAA argues that FINRA’s reliance on technological advancements as a justification for the Proposed Rule rests on “anecdotal industry claims.”¹² Notwithstanding that criticism, NASAA appears to clearly recognize the value of technology in its 2022 Enforcement Report by noting past achievements that “were often fueled by technological advances that made the impossible seem inevitable” and that “remarkable advances in technology are quickly adding futuristic elements in the financial markets.”¹³ The Committee also rejects NASAA’s implication that FINRA’s reliance on broker-dealers’ first-hand and “on the ground” experiences with remote supervision and/or inspection do not constitute a sufficient basis for the Proposed Rule. In fact, such experiences constitute FINRA’s best evidence when assessing how to modify its rules to account for the challenges posed by the growing and staying trend of remote work. Further, while attacking FINRA’s use of “anecdotal industry claims” to support the Proposed Rule, we respectfully note that NASAA itself relies on unsupported, anecdotal examples of misconduct that allegedly would not have been uncovered by remote inspection using technological means.¹⁴

Finally, despite NASAA’s suggestion to the contrary, the Committee believes that FINRA’s Proposed Rule contains appropriate safeguards. FINRA acknowledged in the Notice that “risks to member firms and investors are mitigated by the proposed requirements to have written supervisory procedures for remote inspections, the proposed requirement to conduct and document risk assessments, the proposed limitations on the firms and locations that would be eligible to participate in the proposed pilot program, and the technology already employed for day-

⁶ *Id.*

⁷ 87 FR 50144, 50145.

⁸ *Id.*

⁹ See FINRA Regulatory Notice 20-42, available at <https://dwww.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-42.pdf>.

¹⁰ 87 FR 50144, 50145.

¹¹ *Id.*

¹² See NASAA’s Comment Letter.

¹³ See NASAA’s 2022 Enforcement Report, available at <https://www.nasaa.org/wp-content/uploads/2022/09/2022-Enforcement-Report-FINAL.pdf>.

¹⁴ See NASAA’s Comment Letter.

to-day supervision."¹⁵ The Committee supports the flexibility afforded by remote inspections and the inclusion of appropriate safeguards.

CONCLUSION

The Committee reiterates the comments found in its September 6, 2022 comment letter and appreciates FINRA's commitment to modernizing its rules in light of "[t]echnological improvements and developments in regulatory compliance [that] have provided more tools than before to create more effective and efficient compliance programs."¹⁶ The Proposed Rule, if adopted, would allow for a more flexible approach to supervision which would allow for a "system of risk-based on-site and remote inspections [that] will allow firms to efficiently deploy compliance resources and to use an on-site component only when appropriate."¹⁷

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

Respectfully submitted,

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FOR THE COMMITTEE OF ANNUITY INSURERS

¹⁵ 87 FR 50144, 50154.

¹⁶ *Id.* at 50145.

¹⁷ *Id.* at 50153.