



**FINANCIAL
SERVICES
INSTITUTE**

VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

April 27, 2023

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

Re: Release No. 34-97237, SR-FINRA-2023-006: Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision)

Dear Secretary:

On March 29, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to establish the Residential Supervisory Location classification for private residences where lower risk activities are conducted.¹ A Residential Supervisory Location (“RSL”), meeting the criteria outlined in the rule, would enable firms to use this designation instead of registering a private residence as a branch office or an Office of Supervisory Jurisdiction (“OSJ”) when an associated person is working from home. FINRA explained that it is proposing the RSL based on changes in work structure (e.g., hybrid work location models and work from home), which are practices that have accelerated during the last few years after the onset of the Covid pandemic. This rule proposal is, in many respects, similar to FINRA’s initial proposal for a RSL designation (SR-FINRA-2022-019), for which we submitted comments on August 23, 2022 and November 23, 2022.²

On April 6, 2023, the SEC published this proposed rule change in the Federal Register for public comment. The Financial Services Institute³ (“FSI”) appreciates the opportunity to comment on

¹ Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision), available at <https://www.finra.org/sites/default/files/2023-04/SR-FINRA-2023-006-federal-register-notice.pdf>

² FSI Comment on SR-FINRA-2022-019: Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision) (Aug. 23, 2022), available at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137270-307824.pdf> and FSI Comment on SEC Release No. 34-96191; File No. SR-FINRA-2022-019: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (Nov. 23, 2022), available at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151616-320124.pdf>

³ The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

this important issue. We appreciate FINRA's review of its rules with an eye toward modernizing them to align with the way industry professionals now work. We agree with FINRA's assessment that a decentralized, flexible, hybrid work model has become commonplace. As a result, we support the adoption of a RSL designation. We offer select comments on the proposal, which briefly reiterate certain comments made on the initial proposal, and suggest that FINRA should eliminate the new requirement for firms to provide a quarterly list of residence locations to FINRA.

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 160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.⁴ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers ("IBD").⁵ 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.⁶

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

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. The main office, commonly referred to as the home office, performs the bulk of the firms' supervisory functions. For certain members, the home office serves as the only OSJ. Other members have additional OSJs (sometimes referred to as field OSJs) that perform certain supervisory functions, while still being overseen by the home office, which, in most cases, performs the remaining supervisory responsibilities. As a result, IBD firms transitioned with

⁴ Cerulli Associates, Advisor Headcount 2016, on file with author.

⁵ 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.

⁶ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

relative ease to working and supervising registered representatives in the more decentralized, remote work environment that was necessary during the pandemic.

FINRA is proposing to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA's definition of an OSJ and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safe guards and limitations. As outlined by FINRA, the most significant regulatory effect of this proposed rule change would be that, as a non-branch location, a RSL would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than the annual inspection requirement for OSJs and other supervisory branch offices.

This proposal is substantially similar to FINRA's initial rule proposal on RSLs (the "2022 proposal"), with a few additional requirements and criteria added. First, FINRA is clarifying language related to the books and records requirements for RSLs to have a recordkeeping system, ensure that no required records are physically or electronically maintained and preserved at the RSL, and that the member has prompt access to required records. Second, the current RSL proposal also includes additional firm specific eligibility criteria aimed at ensuring that qualifying firms are meeting their capital requirements and other operational criteria and have not been suspended. In addition, the new proposal does not allow firms to participate in their first year of FINRA membership. Third, a location would be ineligible if one or more associated persons at the location is currently subject to, or had been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the SEC, a Self-Regulatory Authority, or state securities commission alleging they have failed to reasonably supervise. Lastly, FINRA has revised its approach to firm maintenance and regulatory reporting of its RSLs.

In the current proposal, FINRA also provided additional detail on certain aspects of the 2002 proposal based on comment submissions, including that a location is disqualified from being a RSL if a designated supervisor has less than one year of direct supervisory experience with the member. We previously suggested eliminating the one year requirement and reiterate below the unintended consequences caused by its inclusion that, considering the protections provided through this new rule proposal, can be avoided without reducing investor protection.

FSI supports the adoption of the RSL classification and suggests the following areas for consideration.

I. Quarterly Filing Requirement of Residence Locations Designated as RSLs

FINRA is proposing to require member firms to provide it with a list of the residence locations by the 15th day of the month following the calendar quarter through an electronic process or such other process as FINRA may prescribe. FINRA specifically notes that this information is available to it in the Central Registration Depository (CRD), but seeks to have firms provide the same information to it quarterly so that the information is more readily accessible. However, FINRA staff across the organization have ready access to CRD and many internal FINRA systems that organize member data and allow it to be searched derive from the information in CRD. In designating RSLs, we suggest it would be more efficient and increase the accuracy of data to use the established branch office registration and designation framework for reporting and provide a designation specifically for RSLs. This process will reduce regulatory duplication

(by requiring firms to undertake an additional filing) and provide FINRA, as well as other regulators, with more current information (or a snapshot of firm designated RSLs) because of existing requirements to amend and update information within 30 days.

II. Ineligible Locations: One Year of Supervisory Experience with the Member

FINRA proposes to maintain as a disqualifying condition that “one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member.” (.19(b)(4)). As identified in our earlier comments, FSI suggested that the one year of supervisory experience to be eligible for the RSL designation should be revised to better account for those with considerable industry experience. As previously noted, while FSI recognizes this requirement is aimed at ensuring that the RSL is low risk, this approach discounts experienced supervisory personnel who may switch firms or those associated persons who are stand-outs at a firm resulting in promotion to a supervisory role. In both cases, appropriate training on firm operations and supervisory responsibilities more reasonably addresses these regulatory concerns without creating barriers to hiring and retaining talent.

In keeping this ineligibility criteria, FINRA explained that “[w]hile it is possible that an associated person may have prior supervisory experience from another firm, a new supervisor at the current member firm may need time to become knowledgeable about that firm’s systems, people, products, and overall compliance culture.” In modernizing this rule, FINRA seeks to recognize the shift in work force dynamics and practices. During the last few years, hiring and training personnel remotely has become a normal practice. The workforce, especially experienced and qualified candidates, expect work location flexibility from the onset of a new role and this proposed criterion would place an unnecessary impediment on firms to hire and retain talent in a competitive job market.

In addition, flexible work arrangements and work from home are critical to supporting a diverse workforce. This one year requirement may have unintended consequences because it may discourage firms from offering work from home options until the location would be eligible for a RSL designation. While we recognize that firms could register the residence as an OSJ or supervisory branch office, this creates an additional burden that could have a disparate impact on people with years of experience who are reentering the workforce after time off to care for children or other family members. FINRA has exhibited leadership in proposing rules to reduce potential barriers to increasing diversity in the industry, such as its revision of continuing education requirements to ensure that women who leave the workforce to care for children do not face unnecessary barriers to industry reentry. More recently, in November 2022, FINRA announced the creation of an Industry Diversity Advisory Committee,⁷ to assist in “identifying the impact FINRA rule proposals and initiatives may have on FINRA’s commitment to increasing DEI [Diversity Equity and Inclusion].” As we noted in our comment to FINRA Regulatory Notice 21-17, remote work supports caregivers, who are frequently women, and is critical to attract younger generations to the industry. The requirement that a supervisor must have one year of supervisory experience with the member before their residence can be designated a RSL creates an unnecessary barrier for supervisors reentering the workforce as well as for high-performing underrepresented workers ready for supervisory roles.⁸

⁷ <https://www.finra.org/media-center/newsreleases/2022/finra-creates-industry-diversity-advisory-committee>

⁸ Women in the Workplace, McKinsey & Company (Oct. 2022), available at <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace> (noting that fewer women rise through the ranks to leadership roles because of the “broken rung” at the first step up to management.)

FSI suggests that FINRA eliminate or reduce the year-long timeframe. If a bright-line limit must be retained, we suggest that a three or six-month requirement would be ample time for the supervisor to become knowledgeable about that firm's systems, people, products, and overall compliance culture.

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 (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

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