

April 27, 2023

Via E-Mail

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

**Re: File No. 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:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the Financial Industry Regulatory Authority's ("FINRA") Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (the "Notice").² The Notice proposes to add new Supplementary Material .19 ("SM.19") to FINRA Rule 3110 (the "Proposed Rule"), which would establish the Residential Supervisory Location ("RSL") classification for associated persons' private residences at which an associated person engages in specified supervisory activities.

The Committee appreciates the opportunity to comment on the Proposed Rule and is generally supportive of the proposed changes. The addition of the RSL office classification was first proposed by FINRA in July 2022 (the "2022 RSL Rule Filing") and contained terms that are largely similar to the Proposed Rule.³ In connection with the 2022 RSL Rule Filing, the Committee submitted a comment letter that was generally supportive of the proposed changes, while offering several specific comments for the limited purpose of seeking further flexibility in the scope of locations that could be classified as a RSL (the "2022 CAI Comment Letter").⁴

The Proposed Rule does not modify the two RSL office qualification conditions that the Committee commented on in connection with the 2022 RSL Rule Filing. Therefore, in connection with the Proposed Rule, the Committee would like to renew its comments found in the 2022 CAI Comment Letter. In short, the Committee notes that:

- (1) There is no meaningful investor protection benefit to include as a RSL qualification criteria that "only one associated person, or multiple associated persons who reside at

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. 34-97237 (March 31, 2023) 88 FR 20568 (April 6, 2023) (Notice of Filing of File No. SR-FINRA-2023-006), available at <https://www.govinfo.gov/content/pkg/FR-2023-04-06/pdf/2023-07145.pdf>.

³ 88 FR 20568, 20569 ("Subject to further modifications as described further below, the terms of the proposed rule change herein are largely similar to the proposed rule change FINRA filed with the SEC in July 2022.").

⁴ The 2022 CAI Comment Letter is attached to this letter as **Exhibit A** and is posted at <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137273-307827.pdf>.

that location and are members of the same immediate family, conduct business at the location.”⁵ The 2022 CAI Comment Letter lays out several common scenarios in which this criteria would limit the ability of a location to claim RSL status without providing any enhanced investor protection.

- (2) There is also no meaningful investor protection benefit to include as a disqualifying condition for RSL qualification a location at which “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.”⁶ The Committee understands the potential justification for the inclusion of a disqualification condition for RSL classification on locations at which the designated supervisor has less than one year of supervisory experience in the broker-dealer industry. The Committee’s comment is focused on language in the disqualification condition that targets experienced supervisory personnel with less than one year of experience *with the member*. As noted in the 2022 CAI Comment Letter, the Committee believes that there is not a sufficient investor protection justification for this language to offset the substantial chilling effect on the transfer of experienced supervisory personnel from one broker-dealer to another broker-dealer.

The Committee appreciates FINRA’s commitment to modernizing its rules “where the regulatory burden of a rule significantly outweigh[s] the benefits”⁷ The Proposed Rule, if adopted, would allow for a more flexible approach to supervision. With regard to certain home offices that fall within the definition of a RSL, it would remove the bright-line, one-year inspection time requirement applicable to Offices of Supervisory Jurisdiction (“OSJs”) and allow broker-dealers to implement a risk-based approach to the inspection of the locations of supervisory personnel.

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,
Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

⁵ Proposed Rule 3110.19(a)(1).

⁶ Proposed Rule 3110.19(b)(4).

⁷ 88 FR 20568, 20572.

Exhibit A

August 23, 2022

Via E-Mail

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

**Re: File No. 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)**

Dear Secretary:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the Financial Industry Regulatory Authority's ("FINRA") Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (the "Notice").² The Notice proposes to add new Supplementary Material .19 ("SM.19") to FINRA Rule 3110 (the "Proposed Rule"), which would establish the Residential Supervisory Location classification for associated persons' private residences where lower risk activities are conducted.

BACKGROUND

In 2020, in response to the COVID-19 pandemic, FINRA provided temporary relief to broker-dealers from certain regulatory requirements in response to many firms being forced to close their office locations and allow their employees to work from alternative workspaces.³ In the Notice, FINRA acknowledges that, based on feedback from member firms, it understands 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.⁴ FINRA further acknowledges 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 (i.e., video conferencing tools).⁵ Broker-dealers have also reported that remote work has made a positive impact in attracting more diverse talent and retaining existing talent.⁶ This dynamic has prompted FINRA to review aspects of FINRA Rule

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² See Securities Exchange Act Release No. 34-95379 (July 27, 2022) 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019), available at [https://www.finra.org/sites/default/files/2022-08/sr-](https://www.finra.org/sites/default/files/2022-08/sr-finra-2022-019-federal-register-notice.pdf)

³ As noted by FINRA in the Notice, among the temporary relief provided, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. FINRA also modified broker-dealers' inspection obligations under FINRA Rule 3110 through its adoption of Supplementary Material .17 to Rule 3110, which provided member firms the option to conduct inspection of their branch offices and non-branch office locations remotely, subject to specific restrictions.

⁴ 87 FR 47248, 47249.

⁵ 87 FR 47248, 47253.

⁶ *Id.*

3110, which currently requires firms to designate a private residence where lower risk activities are conducted as an Office of Supervisory Jurisdiction (“OSJ”) or branch office.

FINRA has proposed to adopt SM.19, which would establish a “Residential Supervisory Location” – defined as an associated person’s private residence where supervisory activities are conducted.⁷ Under proposed SM.19, a Residential Supervisory Location would be treated as a non-branch location (i.e., an unregistered office). As a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be every three years, rather than the annual inspection required of OSJs and other supervisory branch offices.⁸ FINRA explains in the Notice that, “the proposed rule change to classify some private residences as non-branch locations, subject to specified controls, will not result in a loss of the important regulatory information that the rules were designed, in part, to provide regarding the locations or associated persons.”⁹

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rule and is generally supportive of the proposed changes. The Committee further appreciates FINRA’s commitment to modernizing its rules “where the regulatory burden of a rule significantly outweigh[s] the benefit, or the rule no longer work[s] efficiently given new technologies.”¹⁰ The Committee supports the Proposed Rule but request further flexibility in the scope of locations that can be classified as a Residential Supervisory Location under proposed SM.19.

1. Criteria to Qualify as a Residential Supervisory Location

Proposed SM.19(a) sets forth ten specific criteria that a location must meet to be considered a Residential Supervisory Location. FINRA recognizes in the Notice that the ten criteria are based largely on the established conditions in FINRA Rule 3110(f)(2)(A) for excluding a residence from requiring registration as a branch office. The first of these criteria, proposed SM.19(a)(1), is that “only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location.”

The Committee believes that this language is unnecessarily narrow and restrictive and would limit the ability of a location, in several common scenarios, to claim Residential Supervisory Location status, without providing any meaningful investor protection safeguards. For example, two or more associated persons who are not members of the same immediate family may live in a residence together as roommates and/or partners. Many times, associated persons will need to reside with unrelated roommates and/or partners to afford the rising cost of housing. Further, associated persons often meet other associated persons through their employment who eventually become roommates and/or partners. Under the current criteria, the residential location of two unrelated roommates and/or partners (who are not married and are not designated as domestic partners) would not be eligible for designation as a Residential Supervisory Location.

The Committee requests that FINRA review the criteria in proposed SM.19(a)(1) to consider whether it affords sufficient flexibility and does not unintentionally restrict the living arrangements of a broker-dealer’s associated persons.

2. Ineligible Locations

Proposed SM.19(b) sets forth several conditions that would make a location ineligible for designation as a Residential Supervisory Location. One such disqualifying condition, found in

⁷ See Proposed SM.19(a) to FINRA Rule 3110.

⁸ *Id.*

⁹ See 87 FR 47248, 47252.

¹⁰ See 87 FR 47248, 47251.

proposed SM.19(b)(4)), is 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.”

As noted by FINRA in the Notice, “[t]he pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation of workplace flexibility.”¹¹ The Committee would like to draw particular attention to FINRA’s acknowledgment of the *growing expectation of workplace flexibility*, which persists among staff of Committee members and their affiliated broker-dealers. The Committee is concerned that proposed SM.19(b)(4) would have a chilling effect on the transfer of experienced supervisory personnel from one broker-dealer to another broker-dealer. More specifically, experienced supervisory personnel expect work location flexibility from the onset of starting a new role. If the Rule Proposal is adopted as currently written, broker-dealers hiring an experienced supervisor will be forced into one of two options: (1) forcing the experienced supervisor to work from the firm’s on-site, conventional office location for his or her first year; or (2) registering the residence of the experienced supervisor as an OSJ for a year’s time, even while knowing that it will later change the location to a Residential Supervisory location. The first option, forcing the experienced supervisor to work from the firm’s on-site location, will likely have a substantial chilling effect on the movement of supervisory personnel. The second option will impose additional regulatory burden and costs on the broker-dealer without any investor protection justification.

The Committee urges FINRA to consider whether the restriction found in proposed SM.19(b)(4) furthers FINRA’s goal of investor protection, particularly when the supervisor at issue is an industry veteran but does not have the requisite one year of experience with his or her employing broker-dealer. The Committee advocates for a more flexible approach which removes the bright-line, one-year time requirement and allows broker-dealers to implement a risk-based approach to the inspection of the locations of new supervisory personnel.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch () or Eric Arnold () with any questions or to discuss this comment letter.

Respectfully submitted,

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

¹¹ See 87 FR 47248, 47249.