

May 25, 2023

Via E-Mail

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

**Re: File No. SR-FINRA-2023-007
Notice of Filing of 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 Financial Industry Regulatory Authority's ("FINRA") Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) (the "Notice").² The Notice proposes to add new Supplementary Material .18 to FINRA Rule 3110 (the "Proposed Rule"), which 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 of their branch offices and locations remotely without an on-site visit to such office or location.

BACKGROUND

FINRA first proposed the introduction of a remote inspections pilot program in August 2022 with subsequent amendments in December 2022 (the "2022 Proposal").³ The 2022 Proposal, as amended, contained terms that are largely similar to the Proposed Rule.⁴ The Committee submitted two separate comment letters supportive of the 2022 Proposal, noting that FINRA's proposed institution of a remote inspections pilot program 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.⁵

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. 34-97398 (April 28, 2023) 88 Fed. Reg. 28620 (May 4, 2023) (Notice of Filing of File No. SR-FINRA-2023-007), available at <https://www.finra.org/sites/default/files/2023-05/NOF-FINRA-2023-007.pdf>.

³ See Securities Exchange Act Release No. 34-95452 (Aug. 9, 2022) 87 Fed. Reg. 50144 (Aug. 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021), available at <https://www.govinfo.gov/content/pkg/FR-2022-08-15/pdf/2022-17428.pdf>.

⁴ 88 Fed. Reg. at 28620 ("... the terms of the proposed rule change herein are largely similar to File No. SR-FINRA-2022-021 filed in July 2022, then amended in December 2022 . . .").

⁵ The Committee submitted two comment letters related to the 2022 Proposal. The first was dated September 6, 2022 and was filed in response to FINRA's August 9, 2022 proposal (the "September Comment Letter"). The second was dated December 7, 2022 and was filed in response to the SEC's institution of proceedings to

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rule and is generally supportive of the proposed changes. Beyond expressing support for the Proposed Rule, the Committee comments for the purpose of seeking clarification concerning a proposed requirement that firms provide FINRA with 2019 data regarding on-site inspections.

1. The Committee Supports FINRA's Proposed Modernization of its Supervision Rule to Allow for Remote Inspections

The Committee firmly agrees with FINRA's statement in the Notice that:

proposed Rule 3110.18, on balance, preserves investor protection objectives through the proposed safeguards while also providing FINRA the opportunity to gauge the effectiveness of remote inspections as part of a modernized, reasonably designed supervisory system that reflects the current work environment and availability of technologies that did not exist when the on-site inspection originally was conceived.⁶

The Proposed Rule reflects the reality that member firms' office environments have drastically changed since the onset of the COVID-19 pandemic, with many firms moving towards a hybrid workforce model, with employees working both on-site in a conventional office location and remotely in a private residence. Further, the Notice acknowledges that, over the years, firms have significantly changed the way that they conduct business and communicate, with many firms moving towards electronic recordkeeping, electronic communication (through e-mail, video, or online meetings), and online platforms for opening and placing trades in customer accounts.⁷ The increased digitization of firm data and centralization of control functions has allowed firms to actively monitor their associated persons, regardless of their location, on a more continuous basis, rather than relying on periodic, in-person examinations.⁸ The evolving business environment (which predates the pandemic) coupled with the increase in remote work has resulted in the advancement of technology solutions that firms can use to "enhance[] the effectiveness and efficienc[y] of a firm's overall and ongoing supervision and monitoring of the activities occurring at their offices and locations."⁹

The Committee firmly supports FINRA's statement in the Notice that "regulatory models should evolve to benefit from the availability and use of effective technology tools" given the "confluence of advances in compliance technology and the shift to hybrid work arrangements."¹⁰ The Committee believes the Proposed Rule appropriately balances the need to evolve the regulatory regime with the protection of investors by requiring that member firms take a "reasonable, risk-based" approach to using remote inspections and disallowing certain firms and firm offices from participating in remote inspections if they present a higher risk of possible

determine whether to approve or disapprove the 2022 Proposal (the "December Comment Letter"). The September Comment Letter is posted at <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138362-308395.pdf> and the December Comment Letter is posted at <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20152480-320343.pdf>.

⁶ 88 Fed. Reg. at 28620.

⁷ *Id.* at 28622-23.

⁸ *Id.* at 28623.

⁹ *Id.*

¹⁰ *Id.* at 28624.

investor harm. Further, the Committee supports FINRA's proposal to collect uniform data from member firms that employ remote inspections, which will allow FINRA to study the effectiveness of remote inspections over the course of the three-year pilot program.

2. FINRA's Proposed Requirement for Firms to Provide 2019 Data Regarding On-Site Inspections May Exclude Certain Firms From Participating in the Remote Inspection Pilot Program.

Under the Proposed Rule (SM.18(h)(2)), firms are required to provide certain information to FINRA from 2019 on-site inspections to assist in providing a baseline for inspection activities. Given that the recordkeeping requirements under FINRA Rule 3110(c)(2) requires inspection reports to be maintained for "a minimum of three years," it is conceivable that the information requested may no longer be maintained by the firm. The Committee understands the value of obtaining information regarding on-site inspection as a baseline to measure against firms' remote inspections, however, there is concern that the requirement to provide such information from 2019 may exclude certain firms from being able to participate since they may not be able to provide information for 2019 inspections.

The Committee believes that firms should be allowed to participate in the pilot even if their records from 2019 inspection activity cannot produce all the requested information due to the limited term of the recordkeeping requirement (i.e., three years). As a result, we recommend that the information sharing requirement be revised to require providing the information "if available in the firm's records" and requiring firms to make a "best efforts" attempt to collect the requested information from all reasonably available resources.

CONCLUSION

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