



May 25, 2023

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) / Release No. 34-97398, File No. SR-FINRA-2023-007; Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) / Release No. 34-97237 / File No. SR-FINRA-2023-006**

Dear Ms. Countryman:

The American Securities Association<sup>1</sup> (ASA) appreciates this opportunity to offer comments in response to the Proposed Rule Changes submitted by the Financial Industry Regulatory Authority (FINRA) to the Securities and Exchange Commission (SEC) regarding the Remote Inspections Pilot Program (Pilot Program) under FINRA Rule 3110 as well as Supplementary Material (RSL).

**I. Background.**

The COVID-19 pandemic demonstrated that remote inspections can be efficient and effective, because they allow broker-dealers to centralize their compliance capability. The ASA believes this approach should continue, as it allows firms to manage proper oversight of registered individuals and office locations without compromising investor protection. As we stated in our September 6, 2022, letter<sup>2</sup> to the SEC, the ASA largely supports and appreciates FINRA's ongoing efforts to modernize its rule set and adapt to the evolution of workplace practices.

That said, we do have some feedback on both the Pilot Program and the Residential Supervisory Location proposals. We also stress the need for continued dialogue between FINRA and the SEC and those entities who they regulate to ensure the appropriate balance between regulatory

<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

<sup>2</sup> See ASA Letter to the SEC dated September 6, 2022: <https://files.constantcontact.com/ca98267e701/61824739-41c8-42bb-8ae8-00f717fd937a.pdf>





oversight and an evolving market is achieved. Too often, certain voices with no practical knowledge of how our businesses work send in hyperbolic letters about the alleged weakened of investor protection without citing any evidence that such protections have been eroded.<sup>3</sup> We encourage FINRA to evaluate those comments with eye towards understanding the motivation of the groups submitting them.

## **II. The Remote Inspection Pilot Program.**

First, we are concerned that an allegation of a breach of supervision could cause a firm to lose the ability to use the Pilot Program. We believe that allegations alone should not result in an automatic disqualification, especially when it comes to allegations made by state regulators.

There are challenges in tracking a state regulatory allegation of a failure to supervise. As a result, we worry that the exclusion of an individual from the Pilot Program, who may be subject to investigation by a state securities regulator, could last years without an official resolution.

Second, it is difficult to know when a state investigation officially opens and when it is closed. While certain information is listed on the U4 form, the existence of a state allegation is not.

Third, it can take years for a state to actually initiate an action that results from an allegation.

Finally, the quarterly data submission cadence requirement is also onerous. The specific data required is very detailed and requiring that it be delivered on a quarterly basis – especially when FINRA can access this data whenever it wants – creates an outsized burden on smaller, middle-market, and regional firms. As a result, remote and onsite exam data should not be bundled together. Instead, we suggest that a firm’s submission of findings from remote exams to FINRA will satisfy any concerns around this issue.

We implore federal regulators not to allow unsubstantiated claims by state regulators trying to protect their regulatory turf to dictate how the regulation of the modern broker-dealer business should evolve.

## **III. The Remote Inspection Pilot Program Must Be Considered in Conjunction with FINRA’s Residential Supervisory Location Proposal.**

The ASA believes the RSL strikes the right balance by allowing firms to continue to hire the most qualified candidates, regardless of their location, and to retain existing employees who are forced to relocate due to a variety of reasons.

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<sup>3</sup> Letter on behalf of the North American Securities Administrators Association, Inc. in response to U.S. Securities and Exchange Commission Release No. 34-95452, Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) (the “Pilot Program Proposal”) and Release No. 34-95379, Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) (the “Supervisory Location Proposal”) (collectively, the “Proposals”), available here: <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20137299-307862.pdf>.





Firms currently conduct prudent risk assessments, and take these responsibilities very seriously, prior to allowing remote supervision. If there are concerns at a particular location based on failed office inspections or a history of issues, then the firm also internally determines, using its own metrics, that those individuals should not be part of the remote surveillance program.

We further propose that the Commission and FINRA consider amending the proposal to allow supervisors within the first year of their employment to use the residential supervisory location. Rather than prohibiting new supervisors from taking advantage of the definition, we believe firms should be able to perform an onsite branch exam during the supervisors first year. This will ensure proper oversight while still allowing the flexibility that this new definition creates.

If there is an incompetent supervisor, assuming he/she was not already put on probation, the firm would also decide that they are not a good candidate for an RSL. This approach allows firms to gain diverse skillsets, hire diverse talent that may not live in their geographic footprint, and strictly monitor its employees.

We also believe that remote supervisory personnel are generally low-risk employees, as most do not have clients. Therefore, harmonizing their inspection requirements to match those of a firm's registered representatives in a branch office would be extremely efficient.

The proposal does not consider differences between a true home office and someone who has been provided permission to work from home a few days a week from their secure laptop. Unless inspections of home offices are limited to instances where there is cause, the number of homes that need to be audited will significantly increase resulting in a time-consuming and costly process for firms with little benefit to markets and investors. This will result in an outsized cost and burden on resources for small, middle-market and regional financial services firms.

#### **IV. Conclusion**

Thank you for considering our feedback on the Pilot Program and the Residential Supervisory Location Proposal. We look forward to continued dialogue to achieve the appropriate balance between regulatory oversight and an evolving market.

Sincerely,

*Christopher A. Iacovella*

Christopher A. Iacovella  
President & Chief Executive Officer  
American Securities Association

