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Page 1 of \* 242

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 006

Amendment No. (req. for Amendments \*)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sarah Last Name \* Kwak

Title \* Associate General Counsel

E-mail \* sarah.kwak@finra.org

Telephone \* (202) 728-8471 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/29/2023

(Title \*)

By Kosha Dalal

Vice President and Associate General Counsel

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

**Kosha Dalal**  
Digitally signed by Kosha Dalal  
Date: 2023.03.29 11:21:58 -04'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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FINRA-2023-006 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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FINRA-2023-006 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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FINRA-2023-006 Exhibit 2b.pdf  
FINRA-2023-006 Exhibit 2c.pdf  
FINRA-2023-006 Exhibit 2d.pdf

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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FINRA-2023-006 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA’s definition of an office of supervisory jurisdiction (“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 safeguards and limitations. In accordance with Rule 3110(c), as a non-branch location, a Residential Supervisory Location (or “RSL”) would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,<sup>2</sup> rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>3</sup> FINRA believes the proposal strikes an

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

<sup>3</sup> SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (i.e., non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>, and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (citation defining an OSJ omitted). See also SEC Division of Market Regulation, Staff

appropriate balance to preserve investor protection while developing a risk-based approach for designating residential supervisory locations that includes key safeguards with respect to, among other things, books and records of the member, while excluding locations where higher risk activities may take place or associated persons that may pose higher risk are assigned. 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.<sup>4</sup> FINRA withdrew the 2022 RSL Rule Filing on March 29, 2023 to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.<sup>5</sup>

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices), <https://www.sec.gov/interps/legal/mrslb17.htm>.

<sup>4</sup> See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019) (“2022 RSL Rule Filing”); see also Exhibit 2a.

<sup>5</sup> See Exhibit 2d.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

**3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

I. Background

Early in 2020, the COVID-19 pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.<sup>6</sup> In response to the pandemic, many private and government employers closed their offices and their employees continued with their work from alternative locations such as private residences. FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on

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<sup>6</sup> Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, 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. See Regulatory Notice 20-08 (March 2020) (“Notice 20-08”). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040). Currently, FINRA Rule 3110.17 expires on December 31, 2023. See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-030).

technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. Moreover, the technology advancements that facilitated the transition to working outside the conventional office setting on a broad scale has not only effected a profound change in lifestyle and workplace practices for member firms, but provided FINRA an opportunity to consider aspects of Rule 3110 that may benefit from modernization.<sup>7</sup> As such, FINRA believes measured changes to its regulatory approach would allow firms to effectively and more efficiently carry out their supervisory responsibilities to review the activities of each office or location while preserving investor protections.

#### A. Rule Filing History

In the 2022 RSL Rule Filing, FINRA had proposed establishing a new non-branch location—the Residential Supervisory Location—that would be subject to a host of safeguards and conditions derived from the existing exclusions to the branch office definition under Rule 3110(f)(2)(A). The SEC twice published the 2022 RSL Rule Filing

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<sup>7</sup> In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. See generally Special Notices to Members 01-35 (May 2001) (“Notice 01-35”) (requesting comment on steps that can be taken to streamline FINRA (then NASD) rules) and 02-10 (January 2002) (“Notice 02-10”) (requesting information on steps that can be taken to streamline FINRA (then NASD) rules). See also Regulatory Notice 14-14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s communications with the public rules) and Regulatory Notice 14-15 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s gifts, gratuities and non-cash compensation rules), both launching FINRA’s Retrospective Rule Review Program.

for comment, which elicited responses from many individuals, broker-dealers, and trade organizations and other associations, including the North American Securities Administrators Association, Inc. (“NASAA”) and the Public Investors Advocate Bar Association (“PIABA”).<sup>8</sup> FINRA submitted two letters responding to the comments received by the SEC but did not amend the filing.<sup>9</sup>

All commenters supported the overall intent of the 2022 RSL Rule Filing to allow greater flexibility based on the risks presented, except for NASAA and PIABA. Many commenters expressed strong support for FINRA’s willingness to evolve its longstanding branch office definition under Rule 3110(f)(2)(A) based on lessons learned during the COVID-19 pandemic and evolving technology and workforce arrangements. A fundamental concern from NASAA and PIABA, however, pertained more generally to firms’ ability to supervise associated persons who work from remote offices or locations, a permissible arrangement under specified circumstances that predated the pandemic. In particular, NASAA expressed general concern about “reducing firms’ longstanding supervisory obligations[.]”<sup>10</sup> Among others, the comments sought to adjust the terms of some of the safeguards and conditions relating to books and records; create a more formalized system to help firms identify and track their residential supervisory locations; and broaden the ineligibility criteria, such as the one relating to an associated person’s

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<sup>8</sup> See Submitted Comments to 2022 RSL Rule Filing, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019.htm>.

<sup>9</sup> See Exhibits 2b and 2c.

<sup>10</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022, (“NASAA II”) <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

specified regulatory or disciplinary events to encompass any state law pertaining to securities regulation. March 30, 2023 is the date by which the SEC is required to either approve or disapprove the 2022 RSL Rule Filing. However, on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC in order to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.

B. Key Changes to Current Proposal

While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, as described further below, this proposal makes key adjustments that take into account the concerns expressed by commenters in the following areas by:

(1) enhancing the conditions for RSL designation relating to books and records to provide, among things, that records are not physically or electronically maintained and preserved at the location;

(2) expanding the list of criteria that would make a firm ineligible to rely on proposed Rule 3110.19 to include, among other things, a member firm that has been suspended or a firm that has been a FINRA member for less than 12 months;

(3) adjusting the ineligibility criterion that would make an office or location ineligible to rely on proposed Rule 3110.19 where an associated person is the subject of an investigation or other action relating to a failure to supervise; and

(4) requiring firms to provide, on a quarterly basis, a current list to FINRA of all locations designated as RSLs.



C. Impact on Diversity, Equity and Inclusion (“DEI”) Efforts

Firms have noted that the flexibility hybrid work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>11</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing as well.<sup>12</sup> For example, several firms stated that the move to a hybrid approach for the industry has also allowed them to hire broadly across the entire country instead of localized markets, which profoundly impacts and strengthens a firm’s diversity and inclusion hiring efforts.<sup>13</sup> Having the ability to offer workplace flexibility is key to maintaining employee engagement and retention; otherwise, workers with transferrable skills are likely to seek positions in other industries that allow for remote or hybrid work. Similarly, one group of commenters, composed mostly of small member firms, stated that “[t]he expectations of a modern-day workforce have rapidly evolved from decades old status quo into a modern Work From Anywhere (WFA), DEI-enhancing era. Major online job posting portals now have a filter specifically for ‘Remote/Work from Home’.” (citation omitted).<sup>14</sup> Notably, a report from the U.S. Government Accountability Office highlighted that data from the Equal Employment Opportunity Commission for the

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<sup>11</sup> See generally Submitted Comments to Regulatory Notice 20-42 (December 2020) (“Notice 20-42”), <https://www.finra.org/rules-guidance/notices/20-42#comments>.

<sup>12</sup> See Exhibit 2b.

<sup>13</sup> See Exhibit 2b.

<sup>14</sup> See Letter from Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (collectively referred to as the “Group of 16”), to Vanessa A. Countryman, Secretary, SEC, dated October 25, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20147525-313736.pdf>.

period 2018–2020 that showed both minorities and women in management positions in the financial services industry remained underrepresented with Black and Hispanic representation at about 3% and 4%, respectively, and female representation at 32% in that period.<sup>15</sup> In proposing to adopt Rule 3110.19, FINRA believes that reducing barriers to entry that may be part of the current regulatory framework can be achieved while continuing to preserve investor protection.

D. Renewal of Proposed Rule Change to Adopt Proposed Rule 3110.19

FINRA reaffirms its belief that the current environment merits a reevaluation of the regulatory benefit of requiring firms to designate a private residence, at which specified supervisory functions occur, as an OSJ or branch office. In recognition of the significant technology and industry changes that have enhanced the efficiencies of day-to-day supervision of associated persons and impacted workplace arrangements, FINRA is renewing its proposal to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (i.e., an unregistered office), subject to specified investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least

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<sup>15</sup> See U.S. Government Accountability Office, Financial Services Industry, Overview of Representation of Minorities and Women and Practices to Promote Diversity (GAO-23-106427) (December 2022), [www.gao.gov/assets/gao-23-106427.pdf](http://www.gao.gov/assets/gao-23-106427.pdf).

every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>16</sup>

E. Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (e.g., rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,<sup>17</sup> an OSJ was defined as "any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[,]" and a branch office was one that was "owned or controlled by a member, and which is engaged in the investment banking or securities business."<sup>18</sup> Further, a place of business of a member firm's associated person was considered a branch office if the member: "directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the

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<sup>16</sup> See note 2, supra.

<sup>17</sup> Then NASD adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

<sup>18</sup> See Notice to Members 87-41 (June 1987) ("Notice 87-41") (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes.”<sup>19</sup> In addition, such location was a branch office if the member “authorizes a listing in any publication or any other media, including a professional dealer’s digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office.”<sup>20</sup> The term “branch office” was established “merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid.”<sup>21</sup>

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting examinations that readily identified the appropriate individuals and records at a firm. In response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms’ associated persons engaging in the offer and sale of securities to the public without

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<sup>19</sup> See Notice 87-41.

<sup>20</sup> See Notice 87-41.

<sup>21</sup> See Notice 87-41.

adequate ongoing supervision and regular examination by member firms.<sup>22</sup> The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on "the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]"<sup>23</sup> The newly amended OSJ definition focused on an office at which "the approval [of specified functions] that constitutes formal action by the member takes place."<sup>24</sup> The amendments also added more prescriptive requirements with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the

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<sup>22</sup> See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31). See also Notice to Members 88-84 (November 1988) ("Notice 88-84") (announcing SEC approval of File No. SR-NASD-88-31).

<sup>23</sup> See Notice to Members 88-11 (February 1988) ("Notice 88-11") (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

<sup>24</sup> See Notice 88-11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: "(1) Order execution and/or market making; (2) Structuring of public offerings or private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(1) of the Rules of Fair Practice; or (7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member." See Notice 88-84.

specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.<sup>25</sup>

With respect to the branch office definition, the amendments also refined it from any location "owned or controlled by a member, and which [was] engaged in the investment banking or securities business"<sup>26</sup> to "any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location."<sup>27</sup>

These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.<sup>28</sup> The amendments required a "minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities."<sup>29</sup> In addition, the revisions required OSJ designation for "any office at which the approval that constitutes formal

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<sup>25</sup> See Notice 88-84. See generally Rule 3110(a) and (b).

<sup>26</sup> See Notice 87-41.

<sup>27</sup> See Notice 88-84.

<sup>28</sup> See Notice 87-41.

<sup>29</sup> See Notice 87-41.

action by the member takes place.”<sup>30</sup> Further, FINRA noted that the enhancements to the supervisory practices and definitions reflected its “continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation.”<sup>31</sup> FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (e.g., account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format, not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office registration.<sup>32</sup> FINRA noted that the exclusions were intended as a reasonable accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.<sup>33</sup> In the approval order, the Commission recognized that the amended definition would eliminate the requirement to

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<sup>30</sup> See Notice 88-11.

<sup>31</sup> See Notice 88-11.

<sup>32</sup> In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>33</sup> See Notice to Members 92-18 (April 1992) (announcing SEC approval of File No. SR-NASD-91-42).

register as a branch office unless the securities activity at the office required “continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules.”<sup>34</sup>

In 2001, FINRA launched an initiative to modernize its rules.<sup>35</sup> Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization in light of the SEC’s amendment to the term “office” in the SEC’s Books and Records Rules,<sup>36</sup> the branch office definition used by the New York Stock Exchange (“NYSE”) and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform branch office registration system.<sup>37</sup> FINRA expressly noted that a factor to be considered in modernizing rules included instances “where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies.”<sup>38</sup>

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<sup>34</sup> See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>35</sup> See Notice 01-35.

<sup>36</sup> 17 CFR 240.17a-3 and 240.17a-4. See generally Notice to Members 01-80 (December 2001) (describing amendments to the SEC Books and Records Rules).

<sup>37</sup> See Notice 02-10.

<sup>38</sup> See Notice 01-35.



Until 2005, member firms were required to complete Schedule E to the Form BD (“Schedule E”) to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, NASAA, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.<sup>39</sup> Moreover, the adoption of a uniform definition facilitated the development of a centralized branch office registration system through the Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.<sup>40</sup> With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number by the system, the individuals assigned

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<sup>39</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR-NASD-2003-104) (“Uniform Definition of Branch Office”).

<sup>40</sup> See Form BR.

to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

At the time these definitional changes were underway, technology had progressed with the advent of faster internet, Wi-Fi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's Books and Records Rules,<sup>41</sup> which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM-3010-1 (Standards for Reasonable Review) (now Rule 3110.12 (Standards for Reasonable Review)), as a further safeguard.<sup>42</sup> That rule clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures

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<sup>41</sup> See note 36, supra.

<sup>42</sup> See note 39, supra.

and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., personal computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions can be exempt from registration, subject to specified conditions, without compromising a reasonably designed supervisory system. Moreover, FINRA believes 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. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR and other uniform registration forms.<sup>43</sup> Further, as a non-branch location, an RSL would be subject to an inspection on a regular periodic schedule which FINRA believes would still achieve the purpose of the inspection requirement; that is, to help firms assess whether their supervisory systems and procedures are being followed.<sup>44</sup>

F. Evolution of the Review and Inspection of Activities Occurring at Offices and Locations

Under FINRA's (then NASD's) Rules of Fair Practice, a member firm was required to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities and abuses and at least an annual inspection of each [OSJ]."<sup>45</sup> Alongside the supervisory enhancements that occurred in the 1980s, including the definitional changes described above, FINRA expanded the review requirement to include not only the activities of each office, but also

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<sup>43</sup> For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's "Office of Employment Address" is an unregistered location, the firm must report the address of such location as the individual's "located at" address and must report the branch office that supervises that non-registered location as the "supervised from" location. See Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. See Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/Websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. See Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing/Type of Office/Activities), Item D.

<sup>44</sup> See Notice to Members 99-45 (June 1999) ("Notice 99-45").

<sup>45</sup> See note 18, supra, and accompanying text for the then existing OSJ definition.

the businesses in which a member firm engages. The expanded review requirement included a periodic examination of customer accounts to detect and prevent irregularities and abuses, an annual inspection of each OSJ, and inspection of branch offices in accordance with a regular schedule as set forth in the member's supervisory procedures.<sup>46</sup> As with the definitional changes, these enhancements were intended to address concerns about the adequacy of ongoing supervision and regular examination of associated persons engaged in the offer and sale of securities to the public at locations away from a member firm's office.<sup>47</sup>

FINRA guidance during this period, moreover, focused on the need for effective supervision of the securities-related activities of "off-site representatives," and advised firms that an inspection should include, among other things, a "review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature."<sup>48</sup> This guidance about the effective supervision of "off-site representatives" was pragmatic at a time when business activities were conducted primarily using paper documents<sup>49</sup> that were created and stored locally at an office or location; registered persons were interacting with their customers

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<sup>46</sup> See Notice 88-84.

<sup>47</sup> See Notice 88-84.

<sup>48</sup> See Notice to Members 98-38 (May 1998) ("Notice 98-38") and Notice 99-45.

<sup>49</sup> Paper-based documents included, for example, customer account opening documents; correspondence with customers; marketing materials; communications from registered persons to the firm; order tickets; checks received and forwarded; and fund transmittal records.

largely through in-person meetings, paper-based correspondence transmitted through the postal service, and landline telephone calls; and supervisory personnel were conducting supervision through manual reviews of paper files (e.g., exception reports bearing a supervisor's handwritten comments and initials).

Today, supervisory functions such as approving new customer accounts, reviewing and endorsing customer orders and approving retail communications, in large part, occur through traceable digital channels. Based on FINRA's examination experience over decades, making and preserving records electronically have increasingly become the norm and the preferred recordkeeping medium rather than paper; communications between and among members, their associated persons and customers commonly take place through email, video or some other electronic means; and customer funds and securities are frequently and increasingly transmitted electronically rather than in physical form. In addition, firms have centralized many aspects of their supervisory, surveillance, compliance, and other control functions that facilitate ongoing, real-time monitoring and supervision of activities of dispersed offices and locations. Changes in business practices and work habits have evolved, but the pandemic experience has accelerated reliance on technological advances in surveillance and monitoring capabilities, and spurred significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. With these environmental changes, FINRA believes that there is an opportunity to create a regulatory framework in which member firms can capably continue to carry out their obligation to effectively inspect the supervisory activities taking place at an office or location, subject to the proposed controls, on a regular periodic schedule without diminishing investor protection.

G. FINRA Rule 3110 and Current Requirements to Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule categorizes offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.<sup>50</sup> The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below.<sup>51</sup>

An OSJ is a type of branch office. Rule 3110(f)(2) defines a "branch office" as "any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]"<sup>52</sup> In addition, any location that

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<sup>50</sup> See FINRA Rule 3110(c).

<sup>51</sup> See FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. See Section 2 of Form BR, requiring the applicant to indicate whether an office is a "FINRA OSJ" or "non-OSJ branch," <https://www.finra.org/sites/default/files/AppSupportDoc/p465944.pdf>

<sup>52</sup> See FINRA Rule 3110(f)(2)(A).

is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (i.e., a supervisory branch office).<sup>53</sup> A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.<sup>54</sup>

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member's business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2);<sup>55</sup> (6) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports;<sup>56</sup> or (7) responsibility for supervising the

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<sup>53</sup> See FINRA Rule 3110(f)(2)(B).

<sup>54</sup> See FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

<sup>55</sup> FINRA Rule 3110(b)(2) pertains to the review of a member's investment banking and securities business and provides that "[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member."

<sup>56</sup> In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.



activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.<sup>57</sup>

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.<sup>58</sup> One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person’s primary residence subject to the following express conditions: (1) 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; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor

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<sup>57</sup> See FINRA Rules 3110(a)(4) and 3110(c)(1)(A).

<sup>58</sup> See generally FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with the Rule; (6) electronic communications (e.g., email) are made through the member's electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member ("primary residence exclusion").<sup>59</sup> The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above ("non-primary residence exclusion"). In general, the non-primary residence exclusion typically refers to a vacation or second home.<sup>60</sup> A non-branch location must be inspected on a periodic schedule, presumed to be at least every three years.<sup>61</sup>

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<sup>59</sup> See FINRA Rule 3110(f)(2)(ii)a. through i.

<sup>60</sup> See Notice to Members 06-12 (March 2006) ("Notice 06-12").

<sup>61</sup> See note 2, supra.

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),<sup>62</sup> a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office, respectively.<sup>63</sup> Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.<sup>64</sup>

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the NYSE and other self-regulatory organizations (“SROs”), and state securities regulators, and it has been in place since 2005 (collectively, the “uniform branch office definition”).<sup>65</sup> The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and limitations such as those appearing in the primary residence exclusion.<sup>66</sup> In the approval order for the uniform branch office definition, the Commission noted that the limitations

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<sup>62</sup> See note 58, supra.

<sup>63</sup> See FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

<sup>64</sup> See note 57, supra.

<sup>65</sup> See note 39, supra.

<sup>66</sup> See generally Notice to Members 05-67 (October 2005).

for the primary residence exclusion “closely track the limitations on the use of a private residence in the Books and Records Rules.”<sup>67</sup> The Commission also stated that the seven exclusions “recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.”<sup>68</sup> Further, the Commission stated that “[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer members.”<sup>69</sup> Finally, the Commission expressed the view that the uniform branch office definition “strikes the right balance between providing flexibility to broker-dealer

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<sup>67</sup> See Uniform Definition of Branch Office, supra note 39, 70 FR 54782, 54783 (citation omitted).

<sup>68</sup> See Uniform Definition of Branch Office, supra note 39, 70 FR 54782, 54787. See also Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR-NYSE-2002-34) (stating, “the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.”).

<sup>69</sup> See Uniform Definition of Branch Office, supra note 39, 70 FR 54782, 54787.

firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.”<sup>70</sup> FINRA believes that the Commission’s statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

#### H. Impact of Technology on Supervision and New Workplace Conventions

In response to the public health crisis, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,<sup>71</sup> and discussions with FINRA’s advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do so in some manner in the current environment.<sup>72</sup> These technological tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or

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<sup>70</sup> See note 68, supra.

<sup>71</sup> See, e.g., Submitted Comments to Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001), <https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm>; and Submitted Comments to Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019), <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm>.

<sup>72</sup> See generally Regulatory Notice 21-44 (December 2021).

applications, and electronic communications, including video conferencing tools.<sup>73</sup>

Commenters that responded to the 2022 RSL Rule Filing conveyed the general view that technology has facilitated remote supervision, with some commenters describing the technology used to effectively supervise associated persons.<sup>74</sup> The examples cited included the use of information barriers to safeguard and restrict the flow of confidential and material, non-public information; technology barriers to restrict and control employee access to systems and databases; internal email blocks; internet and social media reviews for evidence of outside business activities or private securities transactions; programs or operating systems to enable firms to conduct computer desktop reviews from another location; web-based communication platforms to communicate with registered persons; video conferencing technology; a centralized repository to retain electronic communications; and software (e.g., DocuSign) to enable customers to digitally sign contracts and other documents such as client attestations and new account documents.<sup>75</sup> In addition, some firms have further noted that the flexibility hybrid work offers has made a positive impact in attracting more diverse talent, and retaining existing

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<sup>73</sup> See generally Regulatory Notice 20-16 (May 2020); see also FINRA White Paper, Technology Based Innovations for Regulatory Compliance (“RegTech”) in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

<sup>74</sup> See Exhibit 2b.

<sup>75</sup> See Exhibit 2b.

talent.<sup>76</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing.<sup>77</sup>

Similar to the changed environment underlying the Commission’s approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence, at which supervisory functions occur, as an OSJ or branch office (*i.e.*, supervisory branch office), subject to an annual inspection schedule, should now be reconsidered where the risk profile of these offices can be effectively controlled through practically based safeguards and limitations.

FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

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<sup>76</sup> See generally note 11, supra.

<sup>77</sup> See Exhibit 2b.

II. Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of an RSL would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>78</sup>

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion<sup>79</sup> as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.<sup>80</sup> In addition, FINRA is proposing to further augment the conditions for RSL designation and the criteria that would make a firm ineligible to rely on proposed Rule 3110.19 if unmet.

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<sup>78</sup> See note 2, supra.

<sup>79</sup> See Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f, and i.

<sup>80</sup> See, e.g., Notice 06-12.



A. Conditions for Designation as a Residential Supervisory Location  
(Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those currently required for the primary residence and non-primary residence exclusions. While many of the proposed conditions are similar to those FINRA had proposed in the 2022 RSL Rule Filing, this proposed rule change adjusts the conditions for RSL designation in two key areas. Specifically, this proposed rule change would add conditions pertaining to (1) books and records to include, among other things, clarifying language about a firm's recordkeeping system and (2) a firm's surveillance and technology tools to provide, among other things, that the tools are appropriate to supervise the risks presented by each RSL.

1. Conditions Derived Largely from Rule 3110 to Remain  
Substantively Unchanged from the 2022 RSL Rule Filing

In the 2022 RSL Rule Filing, FINRA has proposed several conditions for RSL designation that were based on those used for the existing residential exclusions to the branch office definition. Through this proposed rule change, FINRA is proposing to retain those terms subject to some technical adjustments that would align the proposed rule text more closely to the rule text appearing in Rule 3110(f)(2)(A)(ii).

Under proposed Rule 3110.19(a), any such location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) 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 (proposed

Rule 3110.19(a)(1));<sup>81</sup> (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));<sup>82</sup> (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));<sup>83</sup> (4) no sales activity takes place at the location other than as permitted and subject to the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));<sup>84</sup> (5) neither customer funds nor securities are handled at that location (proposed Rule 3110.19(a)(5));<sup>85</sup> (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));<sup>86</sup> (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with

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<sup>81</sup> See Rule 3110(f)(2)(A)(ii)a. (“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[.]”).

<sup>82</sup> See Rule 3110(f)(2)(A)(ii)b. (“The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]”).

<sup>83</sup> See note 82, supra.

<sup>84</sup> An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

<sup>85</sup> See Rule 3110(f)(2)(A)(ii)c. (“Neither customer funds nor securities are handled at the location[.]”).

<sup>86</sup> See Rule 3110(f)(2)(A)(ii)d. (“The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]”).

Rule 3110 (proposed Rule 3110.19(a)(7));<sup>87</sup> and (8) the associated person's electronic communications (e.g., e-mail) are made through the member's electronic system (proposed Rule 3110.19(a)(8))<sup>88</sup>

2. Conditions Adjusted from the 2022 RSL Rule Filing

a. Books and Records (Proposed Rule 3110.19(a)(9))

In the 2022 RSL Rule Filing, FINRA had proposed requiring that all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location. FINRA is proposing a clarifying adjustment to the language to provide that: (1) the member must have a recordkeeping system to make and keep current, and preserve records required to be made, and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; (2) such records are not physically or electronically maintained and preserved at the location; and (3) the member has prompt access to such records.

b. Surveillance and Technology Tools (Proposed Rule 3110.19(a)(10))

To further enhance the proposed conditions for RSL designation, FINRA is proposing to include the requirement that a firm must determine that its surveillance and technology tools are appropriate to supervise its RSLs. FINRA believes that specifying

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<sup>87</sup> See Rule 3110(f)(2)(A)(ii)e. ("The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule[.]").

<sup>88</sup> See Rule 3110(f)(2)(A)(ii)f. ("Electronic communications (e.g., e-mail) are made through the member's electronic system[.]").

baseline expectations with respect to the surveillance and technology tools a firm must have in order to supervise its RSLs would promote investor protection.

FINRA believes that these proposed 10 conditions would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because, for example, the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be physically or electronically maintained and preserved at the location. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales activities are permitted currently under such exclusions. As previously noted, the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.<sup>89</sup> As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations. As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.<sup>90</sup>

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<sup>89</sup> 17 CFR 240.17a-4(l); see also note 39, supra.

<sup>90</sup> See note 2, supra.

B. Member Firm Ineligibility Criteria (Proposed Rule 3110.19(b))

FINRA is further proposing several criteria a member firm must meet before it would be eligible to designate an office or location as a Residential Supervisory Location in accordance with proposed Rule 3110.19. As described further below, the proposed seven ineligibility criteria reflect attributes of a member firm that FINRA believes are more likely to raise investor protection concerns based on FINRA rules. Consistent with the 2022 RSL Rule Filing, proposed Rule 3110.19(b) would provide that a location would be ineligible for designation as a Residential Supervisory Location in accordance with Rule 3110.19 if: (1) the member is currently designated as a “Restricted Firm” under Rule 4111 (Restricted Firm Obligations)<sup>91</sup> (proposed Rule 3110.19(b)(1)); (2) the member is currently designated as a “Taping Firm” under Rule 3170 (Tape Recording of Registered Persons by Certain Firms)<sup>92</sup> (proposed Rule 3110.19(b)(2)); or (3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location<sup>93</sup> (proposed Rule

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<sup>91</sup> In general, Rule 4111 requires member firms that are identified as “Restricted Firms” to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. See generally Regulatory Notice 21-34 (September 2021) (announcing FINRA’s adoption of rules to address firms with a significant history of misconduct).

<sup>92</sup> In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170’s definition of “disciplined firm.” See generally Regulatory Notice 14-10 (March 2014) (announcing FINRA’s adoption of consolidated rules governing supervision).

<sup>93</sup> Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person,

3110.19(b)(3)).<sup>94</sup> Through this proposed rule change, FINRA is proposing to supplement these criteria to include a member firm: (1) that receives a notice from FINRA pursuant to Rule 9557 (Procedures for Regulating Activities under Rule 4110 (Capital Compliance), Rule 4120 (Regulatory Notification and Business Curtailment) or Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)), unless FINRA has otherwise permitted activities in writing pursuant to such rule (proposed Rule 3110.19(b)(4)); (2) is or becomes suspended by FINRA (proposed Rule 3110.19(b)(5)); (3) based on the date in CRD, had its FINRA membership become effective within the prior 12 months (proposed Rule 3110.19(b)(6)); or (4) is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c) (proposed Rule 3110.19(b)(7)).

FINRA believes that a member firm that is experiencing issues complying with its capital requirements or that has been suspended by FINRA is more likely to face significant operational challenges that may negatively impact the firm's overall supervision of its associated persons. FINRA further believes that a firm that has been a

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principal or registered person of the member firm has, in the prior five years, one or more defined "final criminal matters" or two or more "specified risk events" unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person's current member firm or at a new member firm. See generally Regulatory Notice 21-09 (March 2021) (announcing FINRA's adoption of rules to address brokers with a significant history of misconduct).

<sup>94</sup> In the 2022 RSL Rule Filing, FINRA had categorized these criteria as "ineligible locations," but through this proposed rule change, FINRA is proposing to categorize these terms as "member firm ineligibility criteria." See proposed Rule 3110.19(c).

FINRA member for less than 12 months is often still implementing its business plan and developing a supervisory system appropriate tailored to the firm's specific attributes and structure. With respect to a firm that is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c), FINRA believes such a firm has demonstrated challenges in developing or maintaining a robust inspection program. As such, FINRA believes that these proposed ineligibility criteria appropriately account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19.

C. Location Ineligibility Criteria (Proposed Rule 3110.19(c))

In the 2022 RSL Rule Filing, FINRA had proposed several criteria applicable to an associated person that if unmet, would make the location of the associated person ineligible for RSL designation. All but one of the terms of proposed Rule 3110.19(c) remain substantively unchanged from those FINRA had proposed in the 2022 RSL Rule Filing. As described below, FINRA is proposing to make a clarifying adjustment to a criterion applicable to a firm's associated persons.

Under proposed Rule 3110.19(c), a location would be ineligible for designation as a Residential Supervisory Location where: (1) 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 (proposed Rule 3110.19(c)(1)); (2) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04<sup>95</sup> (proposed Rule 3110.19(c)(2)); (3) one or more associated persons

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<sup>95</sup> In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of

at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(c)(3)); (4) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (c)(3) of this proposed Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(c)(4)); (5) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4<sup>96</sup> (proposed Rule 3110.19(c)(5)). These proposed criteria remain substantively unchanged from the 2022 RSL Rule Filing.

In addition to the proposed criteria above, an office or location would be ineligible for designation as a Residential Supervisory Location at which one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency

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experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. See generally Regulatory Notice 17-30 (October 2017) (announcing FINRA’s adoption of consolidated rules governing qualification and registration).

<sup>96</sup> Form U4’s Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures.



or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the Municipal Securities Rulemaking Board or FINRA (proposed Rule 3110.19(c)(6)).<sup>97</sup> This proposed criterion, which is similar to the one FINRA had proposed in the 2022 RSL Rule Filing, is a product of integrating aspects of several “Regulatory Action Disclosure” questions from Form U4 into a single provision.<sup>98</sup> In addition, as adjusted, this proposed criterion is responsive to NASAA’s comment to the 2022 RSL Filing, which recommended broadening the scope of the criterion to include any state laws pertaining to securities regulation, noting that “state regulators investigate and bring actions for violations of state securities laws[,]”<sup>99</sup> and further noted that “state

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<sup>97</sup> See Form U4, Questions 14C(6)–(8) and 14E(5)–(7) (referencing the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, and the rules of the Municipal Securities Rulemaking Board).

<sup>98</sup> See note 96, supra; see also Form U4 Question 14G, which provides:

Have you been notified, in writing, that you are now the subject of any:

- (1) regulatory complaint or proceeding that could result in a “yes” answer to any part of 14C, D or E? (If “yes”, complete the Regulatory Action Disclosure Reporting Page.)
- (2) investigation that could result in a “yes” answer to any part of 14A, B, C, D or E? (If “yes”, complete the Investigation Disclosure Reporting Page.)

<sup>99</sup> See Letter from Melanie Senter Lubin, President, NASAA, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated August 23, 2022 (“NASAA I”),

securities actions typically allege violations of state securities laws and regulations, even if the same conduct could also be a violation of federal securities laws or SRO rules.”<sup>100</sup> FINRA had declined to include the reference to state securities laws in order to remain aligned with the provisions listed in Form U4.<sup>101</sup> But after further consideration, FINRA is proposing to incorporate NASAA’s recommendation to include a reference to “any state law pertaining to the regulation of securities” within the list of provisions under proposed Rule 3110.19(c)(6) to account for state regulators. FINRA is also proposing to add a reference to FINRA rules. While this proposed adjustment would address NASAA’s recommendation, FINRA notes that Form U4 does not have a specific question that elicits information regarding notice of an investigation or other action for a failure to supervise under state laws or FINRA rules and as such, proposed Rule 3110.19(c)(6) would require further information to monitor. A firm would need to be prepared to provide regulators information related to this proposed criterion upon request.

FINRA believes that these proposed six ineligibility criteria applicable to a firm’s associated persons reflect the appropriate limitations on the private residences that can be designated as a Residential Supervisory Location. In particular, FINRA believes that an associated person designated at such location should have more than one year of supervisory experience with the member and have passed the appropriate principal level

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<https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137298-307861.pdf>.

<sup>100</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022 (“NASAA II”), <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

<sup>101</sup> See note 97, *supra*.

qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). While 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 addition, FINRA believes that the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action and the imposition of a mandatory heightened supervisory plan are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.<sup>102</sup>

D. Obligation to Provide List of RSLs to FINRA (Proposed Rule 3110.19(d))

In the 2022 RSL Rule Filing, FINRA had proposed requiring a firm to maintain a list of residence locations in similar fashion as the existing requirement under Rule

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<sup>102</sup> In response to the 2022 RSL Rule Filing, one commenter recommended that a location should be precluded from being designated as an RSL where a firm has implemented its own heightened supervisory plan, suggesting that this additional layer of supervision upon an associated person would warrant an automatic exclusion of such person's private residence as an RSL. In its second letter responding to comments directed to the 2022 RSL Rule Filing, FINRA indicated that a firm's routine evaluation of its supervisory system to ensure it is appropriately tailored to the firm's business may prompt a firm, out of an abundance of caution and independent of specific regulatory requirements or mandates, to undertake additional supervisory measures, including voluntarily imposing a heightened supervisory plan. See Exhibit 2c. FINRA further notes that a "voluntary heightened supervisory plan" is undefined and thus, a firm's view of "heightened supervision" could differ from that of a regulator. For example, a firm could voluntarily implement "heightened supervision" to review with more frequency the trade blotters of a registered person because the blotters relate to a new product of the firm.

3110(f)(2)(A)(ii)i.<sup>103</sup> Two commenters to the 2022 RSL Rule Filing shared their views on this proposed condition.<sup>104</sup> In general, their views pertained to the reliability or completeness of such a list, and the creation of a more formal categorization or appropriate system change so firms can identify and track RSLs in the Central Registration Depository (“CRD<sup>®</sup>”).<sup>105</sup> In further consideration of the comments, FINRA is proposing to require the member to provide FINRA 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 notes that CRD currently provides regulators with information regarding the offices and locations (registered and unregistered) to which associated persons required to be registered are assigned,<sup>106</sup> but requiring member firms to affirmatively provide this information to

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<sup>103</sup> See Rule 3110(f)(2)(A)(ii)i. (“A list of the residence locations is maintained by the member[.]”).

<sup>104</sup> See Exhibits 2a and 2b.

<sup>105</sup> CRD is the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other SROs, state securities regulators and broker-dealer firms. The information maintained in the CRD system is reported by registered broker-dealer firms, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See generally Rule 8312 (FINRA BrokerCheck Disclosure).

<sup>106</sup> FINRA notes that firms are under a continuing obligation to promptly update, among other things, their uniform forms whenever the information becomes inaccurate or incomplete. Amendments must be filed electronically (unless the filer is an approved paper filer) by promptly updating the appropriate section of such forms. See, e.g., general instructions to Form U4 and Form BR.

FINRA through a scheduled process would make this information more readily accessible to regulators.<sup>107</sup>

Proposed Rule 3110.19 would not be available to a member firm or private residence that meets any of the ineligibility criteria in proposed paragraphs (b) or (c), respectively, under Rule 3110.19 even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private residence as an OSJ or branch office, as applicable, unless the location otherwise meets a branch office exclusion under Rule 3110(f)(2)(A). FINRA believes the proposed ineligibility criteria are appropriately derived from existing rule-based criteria that already have a process to identify firms that may pose greater concern (e.g., Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are sensible and consistent with a reasonably designed supervisory system while still preserving investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the safeguards and conditions, and the ineligibility criteria described above should not require registration as branch

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<sup>107</sup> FINRA is exploring ways to provide this information to state regulators in a practical format.

offices, and calibrating the proposed Residential Supervisory Location to a regular periodic inspection schedule is appropriately tailored to the lower risk profile. FINRA notes that as part of efforts between FINRA and the NYSE to align the interpretations of the uniform branch office definition, FINRA made a definitional change to the OSJ definition to exclude from OSJ designation and treat as a non-branch location an office or location at which final approval of research reports occurred,<sup>108</sup> noting that “the limited nature of such activity [did] not necessitate supervision of such a location as an OSJ[.]”<sup>109</sup>

The proposed RSL designation is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.<sup>110</sup>

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<sup>108</sup> See Rule 3110(f)(1)(F).

<sup>109</sup> See Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081, 57082 (October 5, 2007) (Notice of Filing of File No. SR-FINRA-2007-008).

<sup>110</sup> See Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78q(b)(6)(A).

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>111</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection.

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<sup>111</sup> 15 U.S.C. 78q-3(b)(6).

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

A. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time on-site in a conventional office setting, and some may work on-site full time.<sup>112</sup> Absent the proposed rule change, when the temporary relief from the requirement to submit

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<sup>112</sup> According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home about 2.2 days per week on average. See Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, SWAA February 2023 (Updates February 12, 2023), [https://wfhresearch.com/wp-content/uploads/2023/02/WFHRresearch\\_updates\\_February2023.pdf](https://wfhresearch.com/wp-content/uploads/2023/02/WFHRresearch_updates_February2023.pdf). The SWAA is a monthly survey with respondents that are working-age persons in the United States that had earnings of at least \$10,000 in 2019. Further details about this survey can be found at <https://wfhresearch.com>.



branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

B. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns. In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support supervision in the remote work environment.<sup>113</sup> These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in Notice 20-08. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that,

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<sup>113</sup> The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. See McKinsey & Company, How COVID-19 has pushed companies over the technology tipping point—and transformed business forever, October 5, 2020, <https://mck.co/3nlK8b2>.

going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location. As discussed above, a location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of December 31, 2022, FINRA's membership included 3,381 firms<sup>114</sup> with 150,495 registered branch offices. Of these branch offices, 18,564 (12%) are OSJs, with 2,451 of them identified as private residences.<sup>115</sup> There are 21,510 principal level registered persons serving as OSJ supervisors, with 2,165 (12%) working at OSJs identified as private residences.<sup>116</sup> Data on the number of residential locations at which

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<sup>114</sup> This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

<sup>115</sup> The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm's location as a branch office. Form BR's Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a "Private Residence Checkbox." The number of OSJs is derived from Form BR's Section 2 (Registration/Notice Filing/Type of Office/Activities), which requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA's records from Form U4 show that, altogether, there are about 137,777 registered persons with principal registration categories (including those in OSJ supervisory roles).

<sup>116</sup> In addition, FINRA member firms with a single branch account for 1,698 of these OSJs and 2,064 of the supervisors. Sixty-eight FINRA member firms did not

supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in Notice 20-08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these member firms account for most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

C. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch

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have any branches registered at the end of year 2022; these firms are all small member firms.

locations have increased by 17,603 (75%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 2,451 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone would depend on specific information about the activities at residential locations that these forms do not provide.<sup>117</sup>

Table 1 Numbers of Offices and Locations, Pre-Pandemic and Current

	December 31, 2019	December 31, 2022
Registered branch locations	152,682	150,495
<i>OSJs</i>	19,123	18,564
<i>Non-OSJs</i>	134,559	131,931
Non-branch locations	43,678	59,830
<i>Residential non-branch locations</i>	23,475	41,078

<sup>117</sup> Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4. For the numbers of non-branch locations in Table 1, FINRA counted, by firm, unique addresses based on the first seven characters of the Form U4 “Street 1” field, city and state. Addresses that matched the address of the main office or of an existing registered branch were excluded.

*Anticipated Benefits*

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

The proposed rule change also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential Supervisory Location on a full or part time basis, and possibly an increase in the number of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional positions.<sup>118</sup> The

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<sup>118</sup> See note 112, *supra*. See also Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, *Why Working from Home Will Stick* (NBER Working Paper 28731, April 2021), <https://wfhresearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf>, who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, *Work from Home Before and After the COVID-*

expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.<sup>119</sup> Technology has been used not only to make remote work possible but also to conduct a range of compliance and regulatory risk management activities. By facilitating hybrid work arrangements, the proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.<sup>120</sup>

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees.

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19 Outbreak, (Working Paper, October 2022), [https://karelmertenscom.files.wordpress.com/2022/11/wfh\\_oct\\_15\\_paper.pdf](https://karelmertenscom.files.wordpress.com/2022/11/wfh_oct_15_paper.pdf), who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10. Both papers, based on different surveys and, in Bick et al, with added results from a model, conclude that around 22% of full workdays will be provided from home in the long run.

<sup>119</sup> See note 113, supra.

<sup>120</sup> See Ben Charoenwong, Zachary T. Kowaleski, Alan Kwan, & Andrew Sutherland, RegTech, MIT Sloan Research Paper 6563-22 (September 16, 2022), Available at SSRN: <https://ssrn.com/abstract=4000016>. The authors show that broker-dealers that made required compliance technology investments were able to make complementary technology investments in communications and customer relationship management software that resulted in a reduced number of complaints and less employee misconduct.

However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a “branch office,” and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

*Anticipated Costs*

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered

representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

#### D. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

In addition, FINRA considered the merits of adapting other requirements similar to those FINRA had proposed in File No. SR-FINRA-2022-021, a proposal to establish a



voluntary three-year remote inspections pilot program.<sup>121</sup> In particular, the 2022 Remote Inspections Pilot Program Rule Filing includes the requirement for a firm to conduct and document a risk assessment considering several factors referenced in Rule 3110 and others, for each office or location where a firm determines to conduct a remote inspection. FINRA believes that adding the requirement for a firm to conduct and document a risk assessment for designating an office or location as a Residential Supervisory Location would be largely redundant given other requirements applicable to designating an office or location as an RSL. A firm continues to have a fundamental obligation under Rule 3110(a) to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. This supervisory system would, at least in effect, require the assessment and mitigation of the risk that the activities of associated persons working at Residential Supervisory Locations would not comply with the securities laws. The supervisory system thereby reduces the benefit of a separately conducted and documented risk assessment. Similarly, under Rule 3110(b), a firm is required to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. These supervisory procedures would, at least in effect, require the assessment and mitigation of risks of non-compliance

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<sup>121</sup> See Securities Exchange Act Release No. 96520 (December 16, 2022), 87 FR 78737 (December 22, 2022) (Notice of Partial Amendment No. 1 to File No. SR-FINRA-2022-021) (“2022 Remote Inspections Pilot Program Rule Filing”).

posed by the types of business conducted at Residential Supervisory Locations. FINRA determined that requiring a firm to conduct and document a risk assessment for designating an office or location as an RSL would not provide an additional benefit to members or investors.

**5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The SEC published the 2022 RSL Rule Filing for comment and as of the end of the comment period on August 23, 2022, the SEC had received 20 unique comment letters, then subsequently received six more comment letters.<sup>122</sup> On October 31, 2022, FINRA responded to the comments and did not propose changing the terms of the 2022 RSL Rule Filing in response to the comments.<sup>123</sup> On the same day, the Commission instituted proceedings to determine whether to approve or disapprove the 2022 RSL Rule Filing (“Order”),<sup>124</sup> and the SEC received five comments letters in response to the Order.<sup>125</sup> On December 9, 2022, FINRA responded to those comments and did not propose changing the 2022 RSL Rule Filing in response to them.<sup>126</sup> Since then, the SEC has received one supplemental comment letter.<sup>127</sup> March 30, 2023 is the date by which

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<sup>122</sup> See note 8, supra.

<sup>123</sup> See note 8, supra; see also Exhibit 2b.

<sup>124</sup> See Securities Exchange Act Release No. 96191 (October 31, 2022), 87 FR 66767 (November 4, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019).

<sup>125</sup> See note 8, supra.

<sup>126</sup> See note 8, supra; see also Exhibit 2c.

<sup>127</sup> See Letter from Bernard V. Canepa, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa A.

the SEC is required to either approve or disapprove the 2022 RSL Rule Filing. But on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters. While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, the proposed rule change makes some adjustments, which are discussed in detail above under Item 3.(a)II.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>128</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

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Countryman, Secretary, SEC, dated December 20, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20153234-320719.pdf>.

<sup>128</sup> 15 U.S.C. 78s(b)(2).

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. A copy of the 2022 RSL Rule Filing's Form 19b-4.

Exhibit 2b. A copy of FINRA's Response to Comments, dated October 31, 2022.

Exhibit 2c. A copy of FINRA's Response to Comments, dated December 9, 2022.

Exhibit 2d. A copy of FINRA's Withdrawal of the 2022 RSL Rule Filing.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2023-006)

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)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

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 office of supervisory jurisdiction (“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 safeguards and limitations. In accordance with Rule 3110(c), as a non-branch

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

location, a Residential Supervisory Location (or “RSL”) would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,<sup>3</sup> rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>4</sup> FINRA believes the proposal strikes an appropriate balance to preserve investor protection while developing a risk-based approach for designating residential supervisory locations that includes key safeguards with respect to, among other things, books and records of the member, while excluding locations where higher risk activities may take place or associated persons that may pose higher risk are assigned. 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.<sup>5</sup> FINRA withdrew the 2022 RSL Rule Filing on March 29,

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<sup>3</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

<sup>4</sup> SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (*i.e.*, non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>, and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (citation defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices), <https://www.sec.gov/interps/legal/mrs17.htm>.

<sup>5</sup> See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019) (“2022 RSL Rule Filing”); see also Exhibit 2a.

2023 to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.<sup>6</sup>

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(I) Background

Early in 2020, the COVID-19 pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.<sup>7</sup> In response to the pandemic, many private and government

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<sup>6</sup> See Exhibit 2d.

<sup>7</sup> Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, 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. See Regulatory Notice 20-08 (March 2020) (“Notice 20-08”). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that

employers closed their offices and their employees continued with their work from alternative locations such as private residences. FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. Moreover, the technology advancements that facilitated the transition to working outside the conventional office setting on a broad scale has not only effected a profound change in lifestyle and workplace practices for member firms, but provided FINRA an opportunity to consider aspects of Rule 3110 that may benefit from modernization.<sup>8</sup> As such, FINRA believes measured changes to its regulatory approach

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provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040). Currently, FINRA Rule 3110.17 expires on December 31, 2023. See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-030).

<sup>8</sup> In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. See generally Special Notices to Members 01-35 (May 2001) (“Notice 01-35”) (requesting comment on steps that can be taken to streamline FINRA (then NASD) rules) and 02-10 (January 2002) (“Notice 02-10”) (requesting information on steps that can be taken to streamline FINRA (then NASD) rules). See also Regulatory Notice 14-14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s communications with the public rules) and Regulatory Notice 14-15 (April 2014) (requesting comment on the effectiveness and



would allow firms to effectively and more efficiently carry out their supervisory responsibilities to review the activities of each office or location while preserving investor protections.

A. Rule Filing History

In the 2022 RSL Rule Filing, FINRA had proposed establishing a new non-branch location—the Residential Supervisory Location—that would be subject to a host of safeguards and conditions derived from the existing exclusions to the branch office definition under Rule 3110(f)(2)(A). The SEC twice published the 2022 RSL Rule Filing for comment, which elicited responses from many individuals, broker-dealers, and trade organizations and other associations, including the North American Securities Administrators Association, Inc. (“NASAA”) and the Public Investors Advocate Bar Association (“PIABA”).<sup>9</sup> FINRA submitted two letters responding to the comments received by the SEC but did not amend the filing.<sup>10</sup>

All commenters supported the overall intent of the 2022 RSL Rule Filing to allow greater flexibility based on the risks presented, except for NASAA and PIABA. Many commenters expressed strong support for FINRA’s willingness to evolve its longstanding branch office definition under Rule 3110(f)(2)(A) based on lessons learned during the COVID-19 pandemic and evolving technology and workforce arrangements. A fundamental concern from NASAA and PIABA, however, pertained more generally to

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efficiency of FINRA’s gifts, gratuities and non-cash compensation rules), both launching FINRA’s Retrospective Rule Review Program.

<sup>9</sup> See Submitted Comments to 2022 RSL Rule Filing, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019.htm>.

<sup>10</sup> See Exhibits 2b and 2c.

firms' ability to supervise associated persons who work from remote offices or locations, a permissible arrangement under specified circumstances that predated the pandemic. In particular, NASAA expressed general concern about "reducing firms' longstanding supervisory obligations[.]"<sup>11</sup> Among others, the comments sought to adjust the terms of some of the safeguards and conditions relating to books and records; create a more formalized system to help firms identify and track their residential supervisory locations; and broaden the ineligibility criteria, such as the one relating to an associated person's specified regulatory or disciplinary events to encompass any state law pertaining to securities regulation. March 30, 2023 is the date by which the SEC is required to either approve or disapprove the 2022 RSL Rule Filing. However, on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC in order to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.

#### B. Key Changes to Current Proposal

While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, as described further below, this proposal makes key adjustments that take into account the concerns expressed by commenters in the following areas by:

(1) enhancing the conditions for RSL designation relating to books and records to provide, among things, that records are not physically or electronically maintained and preserved at the location;

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<sup>11</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022, ("NASAA II") <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

(2) expanding the list of criteria that would make a firm ineligible to rely on proposed Rule 3110.19 to include, among other things, a member firm that has been suspended or a firm that has been a FINRA member for less than 12 months;

(3) adjusting the ineligibility criterion that would make an office or location ineligible to rely on proposed Rule 3110.19 where an associated person is the subject of an investigation or other action relating to a failure to supervise; and

(4) requiring firms to provide, on a quarterly basis, a current list to FINRA of all locations designated as RSLs.

### C. Impact on Diversity, Equity and Inclusion (“DEI”) Efforts

Firms have noted that the flexibility hybrid work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>12</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing as well.<sup>13</sup> For example, several firms stated that the move to a hybrid approach for the industry has also allowed them to hire broadly across the entire country instead of localized markets, which profoundly impacts and strengthens a firm’s diversity and inclusion hiring efforts.<sup>14</sup> Having the ability to offer workplace flexibility is key to maintaining employee engagement and retention; otherwise, workers with transferrable skills are likely to seek positions in other industries that allow for remote or hybrid work. Similarly, one group of commenters, composed mostly of small member firms, stated that

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<sup>12</sup> See generally Submitted Comments to Regulatory Notice 20-42 (December 2020) (“Notice 20-42”), <https://www.finra.org/rules-guidance/notices/20-42#comments>.

<sup>13</sup> See Exhibit 2b.

<sup>14</sup> See Exhibit 2b.

“[t]he expectations of a modern-day workforce have rapidly evolved from decades old status quo into a modern Work From Anywhere (WFA), DEI-enhancing era. Major online job posting portals now have a filter specifically for ‘Remote/Work from Home’.” (citation omitted).<sup>15</sup> Notably, a report from the U.S. Government Accountability Office highlighted that data from the Equal Employment Opportunity Commission for the period 2018–2020 that showed both minorities and women in management positions in the financial services industry remained underrepresented with Black and Hispanic representation at about 3% and 4%, respectively, and female representation at 32% in that period.<sup>16</sup> In proposing to adopt Rule 3110.19, FINRA believes that reducing barriers to entry that may be part of the current regulatory framework can be achieved while continuing to preserve investor protection.

D. Renewal of Proposed Rule Change to Adopt Proposed Rule 3110.19

FINRA reaffirms its belief that the current environment merits a reevaluation of the regulatory benefit of requiring firms to designate a private residence, at which specified supervisory functions occur, as an OSJ or branch office. In recognition of the significant technology and industry changes that have enhanced the efficiencies of day-to-day supervision of associated persons and impacted workplace arrangements, FINRA

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<sup>15</sup> See Letter from Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (collectively referred to as the “Group of 16”), to Vanessa A. Countryman, Secretary, SEC, dated October 25, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20147525-313736.pdf>.

<sup>16</sup> See U.S. Government Accountability Office, Financial Services Industry, Overview of Representation of Minorities and Women and Practices to Promote Diversity (GAO-23-106427) (December 2022), [www.gao.gov/assets/gao-23-106427.pdf](http://www.gao.gov/assets/gao-23-106427.pdf).

is renewing its proposal to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (i.e., an unregistered office), subject to specified investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>17</sup>

#### E. Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (e.g., rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,<sup>18</sup> an OSJ was defined as “any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[,]” and a branch office was one that was “owned or controlled by a member, and

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<sup>17</sup> See note 3, *supra*.

<sup>18</sup> Then NASD adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

which is engaged in the investment banking or securities business.”<sup>19</sup> Further, a place of business of a member firm’s associated person was considered a branch office if the member: “directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes.”<sup>20</sup> In addition, such location was a branch office if the member “authorizes a listing in any publication or any other media, including a professional dealer’s digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office.”<sup>21</sup> The term “branch office” was established “merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid.”<sup>22</sup>

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting

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<sup>19</sup> See Notice to Members 87-41 (June 1987) (“Notice 87-41”) (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

<sup>20</sup> See Notice 87-41.

<sup>21</sup> See Notice 87-41.

<sup>22</sup> See Notice 87-41.

examinations that readily identified the appropriate individuals and records at a firm. In response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms' associated persons engaging in the offer and sale of securities to the public without adequate ongoing supervision and regular examination by member firms.<sup>23</sup> The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on "the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]"<sup>24</sup> The newly amended OSJ definition focused on an office at which "the approval [of specified functions] that constitutes formal action by the member takes place."<sup>25</sup> The amendments also added more prescriptive requirements

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<sup>23</sup> See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31). See also Notice to Members 88-84 (November 1988) ("Notice 88-84") (announcing SEC approval of File No. SR-NASD-88-31).

<sup>24</sup> See Notice to Members 88-11 (February 1988) ("Notice 88-11") (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

<sup>25</sup> See Notice 88-11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: "(1) Order execution and/or market making; (2) Structuring of public offerings or private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(1) of the Rules of Fair Practice; or

with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.<sup>26</sup>

With respect to the branch office definition, the amendments also refined it from any location "owned or controlled by a member, and which [was] engaged in the investment banking or securities business"<sup>27</sup> to "any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location."<sup>28</sup>

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(7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member." See Notice 88-84.

<sup>26</sup> See Notice 88-84. See generally Rule 3110(a) and (b).

<sup>27</sup> See Notice 87-41.

<sup>28</sup> See Notice 88-84.



These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.<sup>29</sup> The amendments required a "minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities."<sup>30</sup> In addition, the revisions required OSJ designation for "any office at which the approval that constitutes formal action by the member takes place."<sup>31</sup> Further, FINRA noted that the enhancements to the supervisory practices and definitions reflected its "continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation."<sup>32</sup> FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (e.g., account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format, not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office registration.<sup>33</sup> FINRA noted that the exclusions were intended as a reasonable

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<sup>29</sup> See [Notice 87-41](#).

<sup>30</sup> See [Notice 87-41](#).

<sup>31</sup> See [Notice 88-11](#).

<sup>32</sup> See [Notice 88-11](#).

<sup>33</sup> In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone

accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.<sup>34</sup> In the approval order, the Commission recognized that the amended definition would eliminate the requirement to register as a branch office unless the securities activity at the office required “continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules.”<sup>35</sup>

In 2001, FINRA launched an initiative to modernize its rules.<sup>36</sup> Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization in light of the SEC’s amendment to the term “office” in the SEC’s Books and Records Rules,<sup>37</sup> the branch office definition used by the New York Stock Exchange (“NYSE”) and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform

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number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>34</sup> See Notice to Members 92-18 (April 1992) (announcing SEC approval of File No. SR-NASD-91-42).

<sup>35</sup> See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>36</sup> See Notice 01-35.

<sup>37</sup> 17 CFR 240.17a-3 and 240.17a-4. See generally Notice to Members 01-80 (December 2001) (describing amendments to the SEC Books and Records Rules).

branch office registration system.<sup>38</sup> FINRA expressly noted that a factor to be considered in modernizing rules included instances “where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies.”<sup>39</sup>

Until 2005, member firms were required to complete Schedule E to the Form BD (“Schedule E”) to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, NASAA, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.<sup>40</sup> Moreover, the adoption of a uniform definition facilitated the development of a centralized branch office registration system through the

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<sup>38</sup> See Notice 02-10.

<sup>39</sup> See Notice 01-35.

<sup>40</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR-NASD-2003-104) (“Uniform Definition of Branch Office”).

Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.<sup>41</sup> With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number by the system, the individuals assigned to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

At the time these definitional changes were underway, technology had progressed with the advent of faster internet, Wi-Fi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's Books and Records Rules,<sup>42</sup> which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM-3010-1 (Standards for Reasonable Review) (now Rule

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<sup>41</sup> See Form BR.

<sup>42</sup> See note 37, supra.

3110.12 (Standards for Reasonable Review)), as a further safeguard.<sup>43</sup> That rule clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., personal computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions

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<sup>43</sup> See note 40, supra.

can be exempt from registration, subject to specified conditions, without compromising a reasonably designed supervisory system. Moreover, FINRA believes 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. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR and other uniform registration forms.<sup>44</sup> Further, as a non-branch location, an RSL would be subject to an inspection on a regular periodic schedule which FINRA believes would still achieve the purpose of the inspection requirement; that is, to help firms assess whether their supervisory systems and procedures are being followed.<sup>45</sup>

F. Evolution of the Review and Inspection of Activities Occurring at Offices and Locations

Under FINRA's (then NASD's) Rules of Fair Practice, a member firm was required to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities and abuses and at

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<sup>44</sup> For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's "Office of Employment Address" is an unregistered location, the firm must report the address of such location as the individual's "located at" address and must report the branch office that supervises that non-registered location as the "supervised from" location. See Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. See Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/Websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. See Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing/Type of Office/Activities), Item D.

<sup>45</sup> See Notice to Members 99-45 (June 1999) ("Notice 99-45").

least an annual inspection of each [OSJ].”<sup>46</sup> Alongside the supervisory enhancements that occurred in the 1980s, including the definitional changes described above, FINRA expanded the review requirement to include not only the activities of each office, but also the businesses in which a member firm engages. The expanded review requirement included a periodic examination of customer accounts to detect and prevent irregularities and abuses, an annual inspection of each OSJ, and inspection of branch offices in accordance with a regular schedule as set forth in the member’s supervisory procedures.<sup>47</sup> As with the definitional changes, these enhancements were intended to address concerns about the adequacy of ongoing supervision and regular examination of associated persons engaged in the offer and sale of securities to the public at locations away from a member firm’s office.<sup>48</sup>

FINRA guidance during this period, moreover, focused on the need for effective supervision of the securities-related activities of “off-site representatives,” and advised firms that an inspection should include, among other things, a “review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature.”<sup>49</sup> This guidance about the effective supervision of “off-site representatives” was pragmatic at a time when business

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<sup>46</sup> See note 19, supra, and accompanying text for the then existing OSJ definition.

<sup>47</sup> See Notice 88-84.

<sup>48</sup> See Notice 88-84.

<sup>49</sup> See Notice to Members 98-38 (May 1998) (“Notice 98-38”) and Notice 99-45.

activities were conducted primarily using paper documents<sup>50</sup> that were created and stored locally at an office or location; registered persons were interacting with their customers largely through in-person meetings, paper-based correspondence transmitted through the postal service, and landline telephone calls; and supervisory personnel were conducting supervision through manual reviews of paper files (e.g., exception reports bearing a supervisor's handwritten comments and initials).

Today, supervisory functions such as approving new customer accounts, reviewing and endorsing customer orders and approving retail communications, in large part, occur through traceable digital channels. Based on FINRA's examination experience over decades, making and preserving records electronically have increasingly become the norm and the preferred recordkeeping medium rather than paper; communications between and among members, their associated persons and customers commonly take place through email, video or some other electronic means; and customer funds and securities are frequently and increasingly transmitted electronically rather than in physical form. In addition, firms have centralized many aspects of their supervisory, surveillance, compliance, and other control functions that facilitate ongoing, real-time monitoring and supervision of activities of dispersed offices and locations. Changes in business practices and work habits have evolved, but the pandemic experience has accelerated reliance on technological advances in surveillance and monitoring capabilities, and spurred significant changes in lifestyles and work habits, including the

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<sup>50</sup> Paper-based documents included, for example, customer account opening documents; correspondence with customers; marketing materials; communications from registered persons to the firm; order tickets; checks received and forwarded; and fund transmittal records.



growing expectation for workplace flexibility. With these environmental changes, FINRA believes that there is an opportunity to create a regulatory framework in which member firms can capably continue to carry out their obligation to effectively inspect the supervisory activities taking place at an office or location, subject to the proposed controls, on a regular periodic schedule without diminishing investor protection.

G. FINRA Rule 3110 and Current Requirements to Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule categorizes offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.<sup>51</sup> The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below.<sup>52</sup>

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<sup>51</sup> See FINRA Rule 3110(c).

<sup>52</sup> See FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. See Section 2 of Form BR, requiring the applicant to indicate whether an office is a "FINRA OSJ" or "non-OSJ branch," <https://www.finra.org/sites/default/files/AppSupportDoc/p465944.pdf>

An OSJ is a type of branch office. Rule 3110(f)(2) defines a “branch office” as “any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]”<sup>53</sup> In addition, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (i.e., a supervisory branch office).<sup>54</sup> A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.<sup>55</sup>

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member’s business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers’ funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2);<sup>56</sup> (6) final approval of retail communications for use by persons

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<sup>53</sup> See FINRA Rule 3110(f)(2)(A).

<sup>54</sup> See FINRA Rule 3110(f)(2)(B).

<sup>55</sup> See FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

<sup>56</sup> FINRA Rule 3110(b)(2) pertains to the review of a member’s investment banking and securities business and provides that “[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member.”

associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports;<sup>57</sup> or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.<sup>58</sup>

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.<sup>59</sup> One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person’s primary residence subject to the following express

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<sup>57</sup> In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.

<sup>58</sup> See FINRA Rules 3110(a)(4) and 3110(c)(1)(A).

<sup>59</sup> See generally FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

conditions: (1) 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; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with the Rule; (6) electronic communications (e.g., email) are made through the member's electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member ("primary residence exclusion").<sup>60</sup> The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above ("non-primary residence exclusion"). In general, the non-primary residence exclusion typically refers to a vacation or second home.<sup>61</sup> A non-

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<sup>60</sup> See FINRA Rule 3110(f)(2)(ii)a. through i.

<sup>61</sup> See Notice to Members 06-12 (March 2006) ("Notice 06-12").

branch location must be inspected on a periodic schedule, presumed to be at least every three years.<sup>62</sup>

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),<sup>63</sup> a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office, respectively.<sup>64</sup> Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.<sup>65</sup>

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the NYSE and other self-regulatory organizations (“SROs”), and state securities regulators, and it has been in place since 2005 (collectively, the “uniform branch office definition”).<sup>66</sup> The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and

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<sup>62</sup> See note 3, supra.

<sup>63</sup> See note 59, supra.

<sup>64</sup> See FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

<sup>65</sup> See note 58, supra.

<sup>66</sup> See note 40, supra.

limitations such as those appearing in the primary residence exclusion.<sup>67</sup> In the approval order for the uniform branch office definition, the Commission noted that the limitations for the primary residence exclusion “closely track the limitations on the use of a private residence in the Books and Records Rules.”<sup>68</sup> The Commission also stated that the seven exclusions “recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.”<sup>69</sup> Further, the Commission stated that “[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-

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<sup>67</sup> See generally Notice to Members 05-67 (October 2005).

<sup>68</sup> See Uniform Definition of Branch Office, supra note 40, 70 FR 54782, 54783 (citation omitted).

<sup>69</sup> See Uniform Definition of Branch Office, supra note 40, 70 FR 54782, 54787. See also Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR-NYSE-2002-34) (stating, “the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.”).

dealer members.”<sup>70</sup> Finally, the Commission expressed the view that the uniform branch office definition “strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.”<sup>71</sup> FINRA believes that the Commission’s statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

#### H. Impact of Technology on Supervision and New Workplace Conventions

In response to the public health crisis, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,<sup>72</sup> and discussions with FINRA’s advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do

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<sup>70</sup> See Uniform Definition of Branch Office, supra note 40, 70 FR 54782, 54787.

<sup>71</sup> See note 69, supra.

<sup>72</sup> See, e.g., Submitted Comments to Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001), <https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm>; and Submitted Comments to Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019), <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm>.

so in some manner in the current environment.<sup>73</sup> These technological tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or applications, and electronic communications, including video conferencing tools.<sup>74</sup>

Commenters that responded to the 2022 RSL Rule Filing conveyed the general view that technology has facilitated remote supervision, with some commenters describing the technology used to effectively supervise associated persons.<sup>75</sup> The examples cited included the use of information barriers to safeguard and restrict the flow of confidential and material, non-public information; technology barriers to restrict and control employee access to systems and databases; internal email blocks; internet and social media reviews for evidence of outside business activities or private securities transactions; programs or operating systems to enable firms to conduct computer desktop reviews from another location; web-based communication platforms to communicate with registered persons; video conferencing technology; a centralized repository to retain electronic communications; and software (e.g., DocuSign) to enable customers to digitally sign contracts and other documents such as client attestations and new account documents.<sup>76</sup> In addition, some firms have further noted that the flexibility hybrid work

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<sup>73</sup> See generally Regulatory Notice 21-44 (December 2021).

<sup>74</sup> See generally Regulatory Notice 20-16 (May 2020); see also FINRA White Paper, Technology Based Innovations for Regulatory Compliance (“RegTech”) in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

<sup>75</sup> See Exhibit 2b.

<sup>76</sup> See Exhibit 2b.



offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>77</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing.<sup>78</sup>

Similar to the changed environment underlying the Commission’s approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence, at which supervisory functions occur, as an OSJ or branch office (i.e., supervisory branch office), subject to an annual inspection schedule, should now be reconsidered where the risk profile of these offices can be effectively controlled through practically based safeguards and limitations.

FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

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<sup>77</sup> See generally note 12, supra.

<sup>78</sup> See Exhibit 2b.

(II) Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of an RSL would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>79</sup>

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion<sup>80</sup> as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.<sup>81</sup> In addition, FINRA is proposing to further augment the conditions for RSL designation and the criteria that would make a firm ineligible to rely on proposed Rule 3110.19 if unmet.

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<sup>79</sup> See note 3, supra.

<sup>80</sup> See Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f, and i.

<sup>81</sup> See, e.g., Notice 06-12.

A. Conditions for Designation as a Residential Supervisory Location  
(Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those currently required for the primary residence and non-primary residence exclusions. While many of the proposed conditions are similar to those FINRA had proposed in the 2022 RSL Rule Filing, this proposed rule change adjusts the conditions for RSL designation in two key areas. Specifically, this proposed rule change would add conditions pertaining to (1) books and records to include, among other things, clarifying language about a firm's recordkeeping system and (2) a firm's surveillance and technology tools to provide, among other things, that the tools are appropriate to supervise the risks presented by each RSL.

1. Conditions Derived Largely from Rule 3110 to Remain  
Substantively Unchanged from the 2022 RSL Rule Filing

In the 2022 RSL Rule Filing, FINRA has proposed several conditions for RSL designation that were based on those used for the existing residential exclusions to the branch office definition. Through this proposed rule change, FINRA is proposing to retain those terms subject to some technical adjustments that would align the proposed rule text more closely to the rule text appearing in Rule 3110(f)(2)(A)(ii).

Under proposed Rule 3110.19(a), any such location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) 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 (proposed

Rule 3110.19(a)(1));<sup>82</sup> (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));<sup>83</sup> (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));<sup>84</sup> (4) no sales activity takes place at the location other than as permitted and subject to the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));<sup>85</sup> (5) neither customer funds nor securities are handled at that location (proposed Rule 3110.19(a)(5));<sup>86</sup> (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));<sup>87</sup> (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with

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<sup>82</sup> See Rule 3110(f)(2)(A)(ii)a. (“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[.]”).

<sup>83</sup> See Rule 3110(f)(2)(A)(ii)b. (“The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]”).

<sup>84</sup> See note 83, supra.

<sup>85</sup> An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

<sup>86</sup> See Rule 3110(f)(2)(A)(ii)c. (“Neither customer funds nor securities are handled at the location[.]”).

<sup>87</sup> See Rule 3110(f)(2)(A)(ii)d. (“The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]”).

Rule 3110 (proposed Rule 3110.19(a)(7));<sup>88</sup> and (8) the associated person’s electronic communications (e.g., e-mail) are made through the member’s electronic system (proposed Rule 3110.19(a)(8))<sup>89</sup>

2. Conditions Adjusted from the 2022 RSL Rule Filing

a. Books and Records (Proposed Rule 3110.19(a)(9))

In the 2022 RSL Rule Filing, FINRA had proposed requiring that all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location. FINRA is proposing a clarifying adjustment to the language to provide that: (1) the member must have a recordkeeping system to make and keep current, and preserve records required to be made, and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member’s own written supervisory procedures under Rule 3110; (2) such records are not physically or electronically maintained and preserved at the location; and (3) the member has prompt access to such records.

b. Surveillance and Technology Tools (Proposed Rule 3110.19(a)(10))

To further enhance the proposed conditions for RSL designation, FINRA is proposing to include the requirement that a firm must determine that its surveillance and technology tools are appropriate to supervise its RSLs. FINRA believes that specifying

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<sup>88</sup> See Rule 3110(f)(2)(A)(ii)e. (“The associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with this Rule[.]”).

<sup>89</sup> See Rule 3110(f)(2)(A)(ii)f. (“Electronic communications (e.g., e-mail) are made through the member's electronic system[.]”).

baseline expectations with respect to the surveillance and technology tools a firm must have in order to supervise its RSLs would promote investor protection.

FINRA believes that these proposed 10 conditions would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because, for example, the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be physically or electronically maintained and preserved at the location. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales activities are permitted currently under such exclusions. As previously noted, the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.<sup>90</sup> As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations. As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.<sup>91</sup>

B. Member Firm Ineligibility Criteria (Proposed Rule 3110.19(b))

FINRA is further proposing several criteria a member firm must meet before it would be eligible to designate an office or location as a Residential Supervisory Location

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<sup>90</sup> 17 CFR 240.17a-4(l); see also note 40, supra.

<sup>91</sup> See note 3, supra.

in accordance with proposed Rule 3110.19. As described further below, the proposed seven ineligibility criteria reflect attributes of a member firm that FINRA believes are more likely to raise investor protection concerns based on FINRA rules. Consistent with the 2022 RSL Rule Filing, proposed Rule 3110.19(b) would provide that a location would be ineligible for designation as a Residential Supervisory Location in accordance with Rule 3110.19 if: (1) the member is currently designated as a “Restricted Firm” under Rule 4111 (Restricted Firm Obligations)<sup>92</sup> (proposed Rule 3110.19(b)(1)); (2) the member is currently designated as a “Taping Firm” under Rule 3170 (Tape Recording of Registered Persons by Certain Firms)<sup>93</sup> (proposed Rule 3110.19(b)(2)); or (3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location<sup>94</sup> (proposed Rule

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<sup>92</sup> In general, Rule 4111 requires member firms that are identified as “Restricted Firms” to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. See generally Regulatory Notice 21-34 (September 2021) (announcing FINRA’s adoption of rules to address firms with a significant history of misconduct).

<sup>93</sup> In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170’s definition of “disciplined firm.” See generally Regulatory Notice 14-10 (March 2014) (announcing FINRA’s adoption of consolidated rules governing supervision).

<sup>94</sup> Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more defined “final criminal matters” or two or more “specified risk events” unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person’s current member firm or at a new member firm.

3110.19(b)(3)).<sup>95</sup> Through this proposed rule change, FINRA is proposing to supplement these criteria to include a member firm: (1) that receives a notice from FINRA pursuant to Rule 9557 (Procedures for Regulating Activities under Rule 4110 (Capital Compliance), Rule 4120 (Regulatory Notification and Business Curtailment) or Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)), unless FINRA has otherwise permitted activities in writing pursuant to such rule (proposed Rule 3110.19(b)(4)); (2) is or becomes suspended by FINRA (proposed Rule 3110.19(b)(5)); (3) based on the date in CRD, had its FINRA membership become effective within the prior 12 months (proposed Rule 3110.19(b)(6)); or (4) is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c) (proposed Rule 3110.19(b)(7)).

FINRA believes that a member firm that is experiencing issues complying with its capital requirements or that has been suspended by FINRA is more likely to face significant operational challenges that may negatively impact the firm's overall supervision of its associated persons. FINRA further believes that a firm that has been a FINRA member for less than 12 months is often still implementing its business plan and developing a supervisory system appropriate tailored to the firm's specific attributes and structure. With respect to a firm that is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c), FINRA believes such a firm has

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See generally Regulatory Notice 21-09 (March 2021) (announcing FINRA's adoption of rules to address brokers with a significant history of misconduct).

<sup>95</sup> In the 2022 RSL Rule Filing, FINRA had categorized these criteria as "ineligible locations," but through this proposed rule change, FINRA is proposing to categorize these terms as "member firm ineligibility criteria." See proposed Rule 3110.19(c).



demonstrated challenges in developing or maintaining a robust inspection program. As such, FINRA believes that these proposed ineligibility criteria appropriately account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19.

C. Location Ineligibility Criteria (Proposed Rule 3110.19(c))

In the 2022 RSL Rule Filing, FINRA had proposed several criteria applicable to an associated person that if unmet, would make the location of the associated person ineligible for RSL designation. All but one of the terms of proposed Rule 3110.19(c) remain substantively unchanged from those FINRA had proposed in the 2022 RSL Rule Filing. As described below, FINRA is proposing to make a clarifying adjustment to a criterion applicable to a firm's associated persons.

Under proposed Rule 3110.19(c), a location would be ineligible for designation as a Residential Supervisory Location where: (1) 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 (proposed Rule 3110.19(c)(1)); (2) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04<sup>96</sup> (proposed Rule 3110.19(c)(2)); (3) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of

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<sup>96</sup> In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. See generally Regulatory Notice 17-30 (October 2017) (announcing FINRA's adoption of consolidated rules governing qualification and registration).

the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(c)(3)); (4) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (c)(3) of this proposed Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(c)(4)); (5) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4<sup>97</sup> (proposed Rule 3110.19(c)(5)). These proposed criteria remain substantively unchanged from the 2022 RSL Rule Filing.

In addition to the proposed criteria above, an office or location would be ineligible for designation as a Residential Supervisory Location at which one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of

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<sup>97</sup> Form U4’s Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures.

the rules of the Municipal Securities Rulemaking Board or FINRA (proposed Rule 3110.19(c)(6)).<sup>98</sup> This proposed criterion, which is similar to the one FINRA had proposed in the 2022 RSL Rule Filing, is a product of integrating aspects of several “Regulatory Action Disclosure” questions from Form U4 into a single provision.<sup>99</sup> In addition, as adjusted, this proposed criterion is responsive to NASAA’s comment to the 2022 RSL Filing, which recommended broadening the scope of the criterion to include any state laws pertaining to securities regulation, noting that “state regulators investigate and bring actions for violations of state securities laws[,]”<sup>100</sup> and further noted that “state securities actions typically allege violations of state securities laws and regulations, even if the same conduct could also be a violation of federal securities laws or SRO rules.”<sup>101</sup>

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<sup>98</sup> See Form U4, Questions 14C(6)–(8) and 14E(5)–(7) (referencing the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, and the rules of the Municipal Securities Rulemaking Board).

<sup>99</sup> See note 97, *supra*; see also Form U4 Question 14G, which provides:

Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or proceeding that could result in a “yes” answer to any part of 14C, D or E? (If “yes”, complete the Regulatory Action Disclosure Reporting Page.)

(2) investigation that could result in a “yes” answer to any part of 14A, B, C, D or E? (If “yes”, complete the Investigation Disclosure Reporting Page.)

<sup>100</sup> See Letter from Melanie Senter Lubin, President, NASAA, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated August 23, 2022 (“NASAA I”), <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137298-307861.pdf>.

<sup>101</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022 (“NASAA II”),

FINRA had declined to include the reference to state securities laws in order to remain aligned with the provisions listed in Form U4.<sup>102</sup> But after further consideration, FINRA is proposing to incorporate NASAA's recommendation to include a reference to "any state law pertaining to the regulation of securities" within the list of provisions under proposed Rule 3110.19(c)(6) to account for state regulators. FINRA is also proposing to add a reference to FINRA rules. While this proposed adjustment would address NASAA's recommendation, FINRA notes that Form U4 does not have a specific question that elicits information regarding notice of an investigation or other action for a failure to supervise under state laws or FINRA rules and as such, proposed Rule 3110.19(c)(6) would require further information to monitor. A firm would need to be prepared to provide regulators information related to this proposed criterion upon request.

FINRA believes that these proposed six ineligibility criteria applicable to a firm's associated persons reflect the appropriate limitations on the private residences that can be designated as a Residential Supervisory Location. In particular, FINRA believes that an associated person designated at such location should have more than one year of supervisory experience with the member and have passed the appropriate principal level qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). While 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

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<https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

<sup>102</sup> See note 98, supra.

that firm’s systems, people, products, and overall compliance culture. In addition, FINRA believes that the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action and the imposition of a mandatory heightened supervisory plan are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.<sup>103</sup>

D. Obligation to Provide List of RSLs to FINRA (Proposed Rule 3110.19(d))

In the 2022 RSL Rule Filing, FINRA had proposed requiring a firm to maintain a list of residence locations in similar fashion as the existing requirement under Rule 3110(f)(2)(A)(ii)i.<sup>104</sup> Two commenters to the 2022 RSL Rule Filing shared their views on this proposed condition.<sup>105</sup> In general, their views pertained to the reliability or

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<sup>103</sup> In response to the 2022 RSL Rule Filing, one commenter recommended that a location should be precluded from being designated as an RSL where a firm has implemented its own heightened supervisory plan, suggesting that this additional layer of supervision upon an associated person would warrant an automatic exclusion of such person’s private residence as an RSL. In its second letter responding to comments directed to the 2022 RSL Rule Filing, FINRA indicated that a firm’s routine evaluation of its supervisory system to ensure it is appropriately tailored to the firm’s business may prompt a firm, out of an abundance of caution and independent of specific regulatory requirements or mandates, to undertake additional supervisory measures, including voluntarily imposing a heightened supervisory plan. See Exhibit 2c. FINRA further notes that a “voluntary heightened supervisory plan” is undefined and thus, a firm’s view of “heightened supervision” could differ from that of a regulator. For example, a firm could voluntarily implement “heightened supervision” to review with more frequency the trade blotters of a registered person because the blotters relate to a new product of the firm.

<sup>104</sup> See Rule 3110(f)(2)(A)(ii)i. (“A list of the residence locations is maintained by the member[.]”).

<sup>105</sup> See Exhibits 2a and 2b.

completeness of such a list, and the creation of a more formal categorization or appropriate system change so firms can identify and track RSLs in the Central Registration Depository (“CRD<sup>®</sup>”).<sup>106</sup> In further consideration of the comments, FINRA is proposing to require the member to provide FINRA 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 notes that CRD currently provides regulators with information regarding the offices and locations (registered and unregistered) to which associated persons required to be registered are assigned,<sup>107</sup> but requiring member firms to affirmatively provide this information to FINRA through a scheduled process would make this information more readily accessible to regulators.<sup>108</sup>

Proposed Rule 3110.19 would not be available to a member firm or private residence that meets any of the ineligibility criteria in proposed paragraphs (b) or (c), respectively, under Rule 3110.19 even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private

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<sup>106</sup> CRD is the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other SROs, state securities regulators and broker-dealer firms. The information maintained in the CRD system is reported by registered broker-dealer firms, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See generally Rule 8312 (FINRA BrokerCheck Disclosure).

<sup>107</sup> FINRA notes that firms are under a continuing obligation to promptly update, among other things, their uniform forms whenever the information becomes inaccurate or incomplete. Amendments must be filed electronically (unless the filer is an approved paper filer) by promptly updating the appropriate section of such forms. See, e.g., general instructions to Form U4 and Form BR.

<sup>108</sup> FINRA is exploring ways to provide this information to state regulators in a practical format.

residence as an OSJ or branch office, as applicable, unless the location otherwise meets a branch office exclusion under Rule 3110(f)(2)(A). FINRA believes the proposed ineligibility criteria are appropriately derived from existing rule-based criteria that already have a process to identify firms that may pose greater concern (e.g., Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are sensible and consistent with a reasonably designed supervisory system while still preserving investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the safeguards and conditions, and the ineligibility criteria described above should not require registration as branch offices, and calibrating the proposed Residential Supervisory Location to a regular periodic inspection schedule is appropriately tailored to the lower risk profile. FINRA notes that as part of efforts between FINRA and the NYSE to align the interpretations of the uniform branch office definition, FINRA made a definitional change to the OSJ definition to exclude from OSJ designation and treat as a non-branch location an office or location at which final approval of research reports occurred,<sup>109</sup> noting that "the limited

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<sup>109</sup> See Rule 3110(f)(1)(F).

nature of such activity [did] not necessitate supervision of such a location as an OSJ[.]”<sup>110</sup>

The proposed RSL designation is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.<sup>111</sup>

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>112</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public

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<sup>110</sup> See Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081, 57082 (October 5, 2007) (Notice of Filing of File No. SR-FINRA-2007-008).

<sup>111</sup> See Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78o(b)(6)(A).

<sup>112</sup> 15 U.S.C. 78o-3(b)(6).



interest. In recognition of the ongoing advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

## I. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time on-site in a conventional office setting, and some may work on-site full time.<sup>113</sup> Absent the proposed rule change, when the temporary relief from the requirement to submit branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

## II. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns.

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<sup>113</sup> According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home about 2.2 days per week on average. See Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, SWAA February 2023 (Updates February 12, 2023), [https://wfhresearch.com/wp-content/uploads/2023/02/WFHRResearch\\_updates\\_February2023.pdf](https://wfhresearch.com/wp-content/uploads/2023/02/WFHRResearch_updates_February2023.pdf). The SWAA is a monthly survey with respondents that are working-age persons in the United States that had earnings of at least \$10,000 in 2019. Further details about this survey can be found at <https://wfhresearch.com>.

In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support supervision in the remote work environment.<sup>114</sup> These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in Notice 20-08. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that, going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location. As discussed above, a location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of December 31, 2022, FINRA's membership included 3,381 firms<sup>115</sup> with 150,495 registered branch offices. Of these branch offices, 18,564 (12%) are OSJs, with

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<sup>114</sup> The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. See McKinsey & Company, How COVID-19 has pushed companies over the technology tipping point—and transformed business forever, October 5, 2020, <https://mck.co/3nlK8b2>.

<sup>115</sup> This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

2,451 of them identified as private residences.<sup>116</sup> There are 21,510 principal level registered persons serving as OSJ supervisors, with 2,165 (12%) working at OSJs identified as private residences.<sup>117</sup> Data on the number of residential locations at which supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in Notice 20-08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these member firms account for most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

### III. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of

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<sup>116</sup> The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm's location as a branch office. Form BR's Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a "Private Residence Checkbox." The number of OSJs is derived from Form BR's Section 2 (Registration/Notice Filing/Type of Office/Activities), which requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA's records from Form U4 show that, altogether, there are about 137,777 registered persons with principal registration categories (including those in OSJ supervisory roles).

<sup>117</sup> In addition, FINRA member firms with a single branch account for 1,698 of these OSJs and 2,064 of the supervisors. Sixty-eight FINRA member firms did not have any branches registered at the end of year 2022; these firms are all small member firms.

residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch locations have increased by 17,603 (75%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 2,451 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone

would depend on specific information about the activities at residential locations that these forms do not provide.<sup>118</sup>

Table 1 Numbers of Offices and Locations, Pre-Pandemic and Current

	December 31, 2019	December 31, 2022
Registered branch locations	152,682	150,495
OSJs	19,123	18,564
Non-OSJs	134,559	131,931
Non-branch locations	43,678	59,830
Residential non-branch locations	23,475	41,078

#### Anticipated Benefits

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

The proposed rule change also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential

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<sup>118</sup> Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4. For the numbers of non-branch locations in Table 1, FINRA counted, by firm, unique addresses based on the first seven characters of the Form U4 “Street 1” field, city and state. Addresses that matched the address of the main office or of an existing registered branch were excluded.

Supervisory Location on a full or part time basis, and possibly an increase in the number of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional positions.<sup>119</sup> The expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.<sup>120</sup> Technology has been used not only to make remote work possible but also to conduct a range of compliance and regulatory risk management activities. By facilitating hybrid work arrangements, the

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<sup>119</sup> See note 113, supra. See also Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, *Why Working from Home Will Stick* (NBER Working Paper 28731, April 2021), <https://wfhresearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf>, who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, *Work from Home Before and After the COVID-19 Outbreak*, (Working Paper, October 2022), [https://karelmertenscom.files.wordpress.com/2022/11/wfh\\_oct\\_15\\_paper.pdf](https://karelmertenscom.files.wordpress.com/2022/11/wfh_oct_15_paper.pdf), who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10. Both papers, based on different surveys and, in Bick et al, with added results from a model, conclude that around 22% of full workdays will be provided from home in the long run.

<sup>120</sup> See note 114, supra.

proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.<sup>121</sup>

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees. However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a “branch office,” and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

#### Anticipated Costs

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the

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<sup>121</sup> See Ben Charoenwong, Zachary T. Kowaleski, Alan Kwan, & Andrew Sutherland, RegTech, MIT Sloan Research Paper 6563-22 (September 16, 2022), Available at SSRN: <https://ssrn.com/abstract=4000016>. The authors show that broker-dealers that made required compliance technology investments were able to make complementary technology investments in communications and customer relationship management software that resulted in a reduced number of complaints and less employee misconduct.



requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

#### IV. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

In addition, FINRA considered the merits of adapting other requirements similar to those FINRA had proposed in File No. SR-FINRA-2022-021, a proposal to establish a voluntary three-year remote inspections pilot program.<sup>122</sup> In particular, the 2022 Remote Inspections Pilot Program Rule Filing includes the requirement for a firm to conduct and document a risk assessment considering several factors referenced in Rule 3110 and others, for each office or location where a firm determines to conduct a remote inspection. FINRA believes that adding the requirement for a firm to conduct and document a risk assessment for designating an office or location as a Residential Supervisory Location would be largely redundant given other requirements applicable to designating an office or location as an RSL. A firm continues to have a fundamental obligation under Rule 3110(a) to establish and maintain a system to supervise the

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<sup>122</sup> See Securities Exchange Act Release No. 96520 (December 16, 2022), 87 FR 78737 (December 22, 2022) (Notice of Partial Amendment No. 1 to File No. SR-FINRA-2022-021) (“2022 Remote Inspections Pilot Program Rule Filing”).

activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. This supervisory system would, at least in effect, require the assessment and mitigation of the risk that the activities of associated persons working at Residential Supervisory Locations would not comply with the securities laws. The supervisory system thereby reduces the benefit of a separately conducted and documented risk assessment. Similarly, under Rule 3110(b), a firm is required to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. These supervisory procedures would, at least in effect, require the assessment and mitigation of risks of non-compliance posed by the types of business conducted at Residential Supervisory Locations. FINRA determined that requiring a firm to conduct and document a risk assessment for designating an office or location as an RSL would not provide an additional benefit to members or investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The SEC published the 2022 RSL Rule Filing for comment and as of the end of the comment period on August 23, 2022, the SEC had received 20 unique comment letters, then subsequently received six more comment letters.<sup>123</sup> On October 31, 2022, FINRA responded to the comments and did not propose changing the terms of the 2022

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<sup>123</sup> See note 9, *supra*.

RSL Rule Filing in response to the comments.<sup>124</sup> On the same day, the Commission instituted proceedings to determine whether to approve or disapprove the 2022 RSL Rule Filing (“Order”),<sup>125</sup> and the SEC received five comments letters in response to the Order.<sup>126</sup> On December 9, 2022, FINRA responded to those comments and did not propose changing the 2022 RSL Rule Filing in response to them.<sup>127</sup> Since then, the SEC has received one supplemental comment letter.<sup>128</sup> March 30, 2023 is the date by which the SEC is required to either approve or disapprove the 2022 RSL Rule Filing. But on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters. While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, the proposed rule change makes some adjustments, which are discussed in detail above under Item II.A.1.(II).

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<sup>124</sup> See note 9, supra; see also Exhibit 2b.

<sup>125</sup> See Securities Exchange Act Release No. 96191 (October 31, 2022), 87 FR 66767 (November 4, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019).

<sup>126</sup> See note 9, supra.

<sup>127</sup> See note 9, supra; see also Exhibit 2c.

<sup>128</sup> See Letter from Bernard V. Canepa, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated December 20, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20153234-320719.pdf>.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2023-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2023-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>129</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>129</sup> 17 CFR 200.30-3(a)(12).

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input style="width: 40px;" type="text" value="93"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR <input style="width: 40px;" type="text" value="2022"/> - * <input style="width: 40px;" type="text" value="019"/> Amendment No. (req. for Amendments *) <input style="width: 60px;" type="text"/>
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Filing by   
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input style="width: 60px;" type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input style="width: 80%;" type="text" value="Sarah"/>	Last Name * <input style="width: 80%;" type="text" value="Kwak"/>
Title * <input style="width: 95%;" type="text" value="Associate General Counsel"/>	
E-mail * <input style="width: 95%;" type="text" value="sarah.kwak@finra.org"/>	
Telephone * <input style="width: 60%;" type="text" value="(202) 728-8471"/>	Fax <input style="width: 60%;" type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date <input style="width: 80%;" type="text" value="07/15/2022"/>	(Title *)
By <input style="width: 80%;" type="text" value="Kosha Dalal"/> <small>(Name *)</small>	<input style="width: 80%;" type="text" value="Vice President and Associate General Counsel"/>

Kosha Dalal

Digitally signed by Kosha Dalal  
 Date: 2022.07.15 15:49:21 -04'00'

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

FINRA-2022-019 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

FINRA-2022-019 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.



**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA’s definition of an office of supervisory jurisdiction (“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 safeguards and limitations. In accordance with Rule 3110(c), as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,<sup>2</sup> rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

<sup>3</sup> SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (*i.e.*, non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>, and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are bracketed.

\* \* \* \* \*

### **3100. SUPERVISORY RESPONSIBILITIES**

#### **3110. Supervision**

(a) through (f) No Change.

••• **Supplementary Material:** -----

.01 through .17 No Change.

**.18 Reserved.**

#### **.19 Residential Supervisory Location**

**(a) Residential Supervisory Location.** Notwithstanding any other provisions of Rule 3110(f), and subject to paragraph (b) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, including those described in Rule 3110(f)(1)(D) through (G) or in Rule 3110(f)(2)(B), shall be considered for those activities a non-branch location, provided that:

(1) 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;

defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) ("SLB 17") (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or "for cause" inspections of those offices), <https://www.sec.gov/interp/leg/mrslb17.htm>.

(2) the location is not held out to the public as an office;

(3) the associated person does not meet with customers or prospective customers at the location;

(4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii);

(5) neither customer funds nor securities are handled at that location;

(6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

(8) all electronic communications by the associated person at that location are made through the member's electronic system;

(9) a list of the residence locations is maintained by the member; and

(10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

**(b) Ineligible Locations**

A location shall not be eligible for designation as a non-branch location in accordance with Rule 3110.19 if:

(1) the member is designated as a Restricted Firm under Rule 4111;

(2) the member is designated as a Taping Firm under Rule 3170;

(3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location;

(4) 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;

(5) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04;

(6) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency;

(7) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association;

(8) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; or

(9) one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, a self-regulatory

organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the MSRB.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 90 days following the publication of the Regulatory Notice announcing Commission approval of the proposed rule change.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

Background

Early in 2020, the COVID-19 pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address

the public health crisis.<sup>4</sup> In response to the pandemic, many private and government employers closed their offices and allowed their employees to work from alternative worksites (e.g., an employee’s residence). As jurisdictions scale back pandemic-related restrictions,<sup>5</sup> many member firms are moving towards a blended workforce model,

<sup>4</sup> Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, 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. See Regulatory Notice 20-08 (March 2020) (“Notice 20-08”). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040). FINRA Rule 3110.17 expires on December 31, 2022. See Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001).

<sup>5</sup> See, e.g., Government of the District of Columbia, Mayor’s Order 2022-029 (February 14, 2022) (announcing the end of the indoor mask mandate at certain venues effective March 1, 2022; and the end of the requirement for certain private venues to check vaccination status effective February 14, 2022); State of New York, “Winter Toolkit for New Phase of COVID Response: Keep New York Safe, Open and Moving Forward” (Governor Kathy Hochul lifting the statewide indoor business mask-or-vaccine requirement starting on February 10, 2022, and remaining optional for businesses, local governments and counties to enforce) (February 9, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-winter-toolkit-new-phase-covid-response-keep-new-york-safe-open-and>; and State of California, Office of Governor Gavin Newsom, “Governors Newsom, Brown and Inslee Announce Updated Health Guidance,” (announcing that on March 11, 2022, California, Oregon and Washington to adopt new indoor

whereby employees work both on-site in a conventional office setting and remotely in an alternative location such as a private residence. Based on feedback from member firms, FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. These dynamics have persuaded FINRA to review aspects of Rule 3110 that may benefit from modernization.<sup>6</sup> The changes brought forth by the pandemic merit a reevaluation of the regulatory benefit of requiring firms to designate a private residence where lower risk activities are conducted as an OSJ or branch office. In recognition of the significant technology and industry changes that are impacting workplace arrangements, FINRA is proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (i.e., an unregistered office), subject to specified

mask policies and move from mask requirements to mask recommendations in schools) (February 28, 2022).

<sup>6</sup> In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. See generally Special Notices to Members 01-35 (May 2001) (“Notice 01-35”) (requesting comment on steps that can be taken to streamline FINRA rules) and 02-10 (January 2002) (“Notice 02-10”) (requesting information on steps that can be taken to streamline FINRA rules). See also Regulatory Notice 14-14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s communications with the public rules) and Regulatory Notice 14-15 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s gifts, gratuities and non-cash compensation rules), both launching FINRA’s Retrospective Rule Review Program.

investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>7</sup>

#### Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (e.g., rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,<sup>8</sup> an OSJ was defined as "any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[.]" and a branch office was one that was "owned or controlled by a member, and which is engaged in the investment banking or securities business."<sup>9</sup> Further, a place of

<sup>7</sup> See note 2, supra.

<sup>8</sup> FINRA (then NASD) adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

<sup>9</sup> See Notice to Members 87-41 (June 1987) ("Notice 87-41") (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair



business of a member firm's associated person was considered a branch office if the member: "(1) directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes."<sup>10</sup> In addition, such location was a branch office if the member "authorizes a listing in any publication or any other media, including a professional dealer's digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office."<sup>11</sup> The term "branch office" was established "merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid."<sup>12</sup>

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting examinations that readily identified the appropriate individuals and records at a firm. In

Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

<sup>10</sup> See Notice 87-41.

<sup>11</sup> See Notice 87-41.

<sup>12</sup> See Notice 87-41.

response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms' associated persons engaging in the offer and sale of securities to the public without adequate ongoing supervision and regular examination by member firms.<sup>13</sup> The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on "the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]"<sup>14</sup> The newly amended OSJ definition focused on an office at which "the approval [of specified functions] that constitutes formal action by the member takes place."<sup>15</sup> The amendments also added more prescriptive requirements

<sup>13</sup> See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31). See also Notice to Members 88-84 (November 1988) ("Notice 88-84") (announcing SEC approval of File No. SR-NASD-88-31).

<sup>14</sup> See Notice to Members 88-11 (February 1988) ("Notice 88-11") (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

<sup>15</sup> See Notice 88-11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: "(1) Order execution and/or market making; (2) Structuring of public offerings or private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(1) of the Rules of Fair Practice; or

with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.<sup>16</sup>

With respect to the branch office definition, the amendments also refined it from any location "owned or controlled by a member, and which [was] engaged in the investment banking or securities business"<sup>17</sup> to "any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location."<sup>18</sup>

(7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member." See Notice 88-84.

<sup>16</sup> See Notice 88-84. See generally Rule 3110(a) and (b).

<sup>17</sup> See Notice 87-41.

<sup>18</sup> See Notice 88-84.

These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.<sup>19</sup> The amendments required a "minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities."<sup>20</sup> In addition, the revisions required OSJ designation for "any office at which the approval that constitutes formal action by the member takes place."<sup>21</sup> Further, FINRA noted that the enhancements to the supervisory practices and definitions reflected its "continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation."<sup>22</sup> FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (e.g., account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format, not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office

<sup>19</sup> See Notice 87-41.

<sup>20</sup> See Notice 87-41.

<sup>21</sup> See Notice 88-11.

<sup>22</sup> See Notice 88-11.

registration.<sup>23</sup> FINRA noted that the exclusions were intended as a reasonable accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.<sup>24</sup> In the approval order, the Commission recognized that the amended definition would eliminate the requirement to register as a branch office unless the securities activity at the office required “continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules.”<sup>25</sup>

In 2001, FINRA launched an initiative to modernize its rules.<sup>26</sup> Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization in light of the SEC’s amendment to the term “office” in the

<sup>23</sup> In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>24</sup> See Notice to Members 92-18 (April 1992) (announcing SEC approval of File No. SR-NASD-91-42).

<sup>25</sup> See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>26</sup> See Notice 01-35.

SEC's Books and Records Rules,<sup>27</sup> the branch office definition used by the New York Stock Exchange ("NYSE") and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform branch office registration system.<sup>28</sup> FINRA expressly noted that a factor to be considered in modernizing rules included instances "where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies."<sup>29</sup>

Until 2005, member firms were required to complete Schedule E to the Form BD ("Schedule E") to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, the North

<sup>27</sup> 17 CFR 240.17a-3 and 240.17a-4. See generally Notice to Members 01-80 (December 2001) (describing amendments to the SEC Books and Records Rules).

<sup>28</sup> See Notice 02-10.

<sup>29</sup> See Notice 01-35.

American Securities Administrators Association, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.<sup>30</sup> Moreover, the adoption of a uniform definition facilitated the development of a centralized branch office registration system through the Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.<sup>31</sup> With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number by the system, the individuals assigned to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

By the 1990s, technology had progressed with the advent of faster internet, wifi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's

<sup>30</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR-NASD-2003-104).

<sup>31</sup> See Form BR.

Books and Records Rules,<sup>32</sup> which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM-3010-1 (Standards for Reasonable Review) (now Rule 3110.12 (Standards for Reasonable Review)), as a further safeguard. It clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., computers, email, mobile phones, electronic

<sup>32</sup> See note 27, supra.



communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions can be exempt from registration, subject to specified conditions, without compromising a reasonably designed supervisory system. Moreover, FINRA believes 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. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR (Uniform Branch Office Registration Form) and other uniform registration forms.<sup>33</sup>

<sup>33</sup> For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's "Office of Employment Address" is an unregistered location, the firm must report the address of such location as the individual's "located at" address and must report the branch office that supervises that non-registered location as the "supervised from" location. See Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. See Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/Websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. See Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing/Type of Office/Activities), Item D.

FINRA Rule 3110 and Current Requirements to Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule categorizes offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.<sup>34</sup> The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below.<sup>35</sup>

OSJs are a subset of branch offices. Rule 3110(f)(2) defines a "branch office" as "any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]"<sup>36</sup> In addition, any location that

<sup>34</sup> See FINRA Rule 3110(c).

<sup>35</sup> See FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. See Section 2 of Form BR, requiring the applicant to indicate whether an office is a "FINRA OSJ" or "non-OSJ branch," <https://www.finra.org/sites/default/files/web-crd-form-br-filing.pdf>.

<sup>36</sup> See FINRA Rule 3110(f)(2)(A).

is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (i.e., a supervisory branch office).<sup>37</sup> A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.<sup>38</sup>

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member's business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2);<sup>39</sup> (6) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports;<sup>40</sup> or (7) responsibility for supervising the

<sup>37</sup> See FINRA Rule 3110(f)(2)(B).

<sup>38</sup> See FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

<sup>39</sup> FINRA Rule 3110(b)(2) pertains to the review of a member's investment banking and securities business and provides that "[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member."

<sup>40</sup> In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.

activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.<sup>41</sup>

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.<sup>42</sup> One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person’s primary residence subject to the following express conditions: (1) 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; (2) the location is not held out to the public as an office and the associated

<sup>41</sup> See FINRA Rules 3110(a)(4) and 3110(c)(1)(A).

<sup>42</sup> See generally FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with the Rule; (6) electronic communications (e.g., email) are made through the member's electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member ("primary residence exclusion").<sup>43</sup> The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above ("non-primary residence exclusion"). In general, the non-primary residence exclusion typically refers to a vacation or second home.<sup>44</sup> A non-branch location must be inspected on a periodic schedule, presumed to be at least every three years.<sup>45</sup>

<sup>43</sup> See FINRA Rule 3110(f)(2)(ii)a. through i.

<sup>44</sup> See Notice to Members 06-12 (March 2006) ("Notice 06-12").

<sup>45</sup> See note 2, supra.

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),<sup>46</sup> a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office, respectively.<sup>47</sup> Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.<sup>48</sup>

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the NYSE and other self-regulatory organizations (“SROs”), and state securities regulators, and it has been in place since 2005 (collectively, the “uniform branch office definition”).<sup>49</sup> The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and limitations such as those appearing in the primary residence exclusion.<sup>50</sup> In the approval

<sup>46</sup> See note 42, supra.

<sup>47</sup> See FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

<sup>48</sup> See note 41, supra.

<sup>49</sup> See note 30, supra.

<sup>50</sup> See generally Notice to Members 05-67 (October 2005).

order for the uniform branch office definition, the Commission noted that the limitations for the primary residence exclusion “closely track the limitations on the use of a private residence in the Books and Records Rules.”<sup>51</sup> The Commission also stated that the seven exclusions “recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.”<sup>52</sup> Further, the Commission stated that “[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer members.”<sup>53</sup> Finally, the Commission expressed the view that the uniform branch office definition “strikes the right balance between providing flexibility to broker-dealer

<sup>51</sup> See 70 FR 54782, 54783 (citation omitted).

<sup>52</sup> See 70 FR 54782, 54787. See also Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR-NYSE-2002-34) (stating, “the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.”).

<sup>53</sup> See 70 FR 54782, 54787.

firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.”<sup>54</sup> FINRA believes that the Commission’s statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

#### Impact of New Workplace Models

As noted above, many employers closed their offices and moved to a broad remote work environment to contend with the public health crisis. In response, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,<sup>55</sup> and discussions with FINRA’s advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do so in some manner in the current environment.<sup>56</sup> These technological

<sup>54</sup> See note 52, supra.

<sup>55</sup> See, e.g., Submitted Comments to Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001), <https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm>; and Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019), <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm>.

<sup>56</sup> See generally Regulatory Notice 21-44 (December 2021).



tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or applications, and electronic communications, including video conferencing tools.<sup>57</sup> In addition, some firms have further noted that the flexibility remote work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>58</sup>

As pandemic-related restrictions are easing,<sup>59</sup> many member firms are moving towards a blended workforce model for their employees, consisting of working on-site in a conventional office setting and working remotely in an alternative location such as a private residence. Similar to the changed environment underlying the Commission’s approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence as an OSJ or branch office should now be reconsidered where the risk profile of these offices can be effectively controlled through practically

<sup>57</sup> See generally Regulatory Notice 20-16 (May 2020); see also FINRA White Paper, Technology Based Innovations for Regulatory Compliance (“RegTech”) in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

<sup>58</sup> See generally Submitted Comments to Regulatory Notice 20-42 (December 2020), <https://www.finra.org/rules-guidance/notices/20-42#comments>.

<sup>59</sup> See note 5, supra.

based safeguards and limitations. FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of a Residential Supervisory Location would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>60</sup>

<sup>60</sup> See note 2, supra.

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion<sup>61</sup> as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.<sup>62</sup> In addition, FINRA is proposing to further augment the safeguards and limitations to describe the locations that would be ineligible to rely on proposed Rule 3110.19.

A. Safeguards and Conditions to Rely on the Residential Supervisory Location Exclusion (Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those currently required for the primary residence and non-primary residence exclusions. FINRA is proposing to add one new condition to a Residential Supervisory Location: a restriction from maintaining original books and records at such location.

Under proposed Rule 3110.19(a), any such location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) 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 (proposed

<sup>61</sup> See Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f., and i.

<sup>62</sup> See, e.g., Notice 06-12.

Rule 3110.19(a)(1));<sup>63</sup> (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));<sup>64</sup> (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));<sup>65</sup> (4) no sales activity takes place at the location other than as permitted and subject to the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));<sup>66</sup> (5) neither customer funds nor securities are handled at that location (proposed Rule 3110.19(a)(5));<sup>67</sup> (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));<sup>68</sup> (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with

<sup>63</sup> See Rule 3110(f)(2)(A)(ii)a. (“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[.]”).

<sup>64</sup> See Rule 3110(f)(2)(A)(ii)b. (“The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]”).

<sup>65</sup> See note 64, supra.

<sup>66</sup> An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

<sup>67</sup> See Rule 3110(f)(2)(A)(ii)c. (“Neither customer funds nor securities are handled at the location[.]”).

<sup>68</sup> See Rule 3110(f)(2)(A)(ii)d. (“The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]”).

Rule 3110 (proposed Rule 3110.19(a)(7));<sup>69</sup> (8) all electronic communications by the associated person at that location are made through the member's electronic system (proposed Rule 3110.19(a)(8));<sup>70</sup> (9) a list of the residence locations is maintained by the member (proposed Rule 3110.19(a)(9));<sup>71</sup> and (10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location (proposed Rule 3110.19(a)(10)).

FINRA notes that the proposed conditions are substantially similar to those applied to the current primary and non-primary residence exclusions, and are supplemented by a proposed additional condition that would preclude a firm from maintaining any books or records required to be made and preserved by the member under the federal securities laws or FINRA rules at the Residential Supervisory Location. FINRA believes that this proposed new limitation would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be maintained on-site. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales

<sup>69</sup> See Rule 3110(f)(2)(A)(ii)e. ("The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule[.]").

<sup>70</sup> See Rule 3110(f)(2)(A)(ii)f. ("Electronic communications (e.g., e-mail) are made through the member's electronic system[.]").

<sup>71</sup> See Rule 3110(f)(2)(A)(ii)i. ("A list of the residence locations is maintained by the member[.]").

activities are permitted currently under such exclusions. As previously noted, the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.<sup>72</sup> As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations. As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.<sup>73</sup>

B. Ineligible Locations (Proposed Rule 3110.19(b))

FINRA is further proposing several location categories that are ineligible for designation as a Residential Supervisory Location. The nine proposed categories of ineligibility are events or activities of a member firm or its associated persons that FINRA believes are more likely to raise investor protection concerns based on FINRA rules, an associated person's level of supervisory experience with the member firm or qualifications, or an associated person's record of specified regulatory or disciplinary events.

1. Member Firm Ineligibility

Under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, non-branch location, in accordance with Rule

<sup>72</sup> 17 CFR 240.17a-4(1); see also note 30, supra.

<sup>73</sup> See note 2, supra.

3110.19 if: (i) the member is designated as a “Restricted Firm” under Rule 4111 (Restricted Firm Obligations)<sup>74</sup> (proposed Rule 3110.19(b)(1)); (ii) the member is designated as a “Taping Firm” under Rule 3170 (Tape Recording of Registered Persons by Certain Firms)<sup>75</sup> (proposed Rule 3110.19(b)(2)); or (iii) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location<sup>76</sup> (proposed Rule 3110.19(b)(3)). These rules expressly account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19(a).

<sup>74</sup> In general, Rule 4111 requires member firms that are identified as “Restricted Firms” to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. See generally Regulatory Notice 21-34 (September 2021) (announcing FINRA’s adoption of rules to address firms with a significant history of misconduct).

<sup>75</sup> In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170’s definition of “disciplined firm.” See generally Regulatory Notice 14-10 (March 2014) (announcing FINRA’s adoption of consolidated rules governing supervision).

<sup>76</sup> Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more defined “final criminal matters” or two or more “specified risk events” unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person’s current member firm or at a new member firm. See generally Regulatory Notice 21-09 (March 2021) (announcing FINRA’s adoption of rules to address brokers with a significant history of misconduct).

2. Associated Person Ineligibility

In addition, under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, a non-branch location, in accordance with proposed Rule 3110.19 where: (i) 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 (proposed Rule 3110.19(b)(4)); (ii) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04<sup>77</sup> (proposed Rule 3110.19(b)(5)); (iii) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(b)(6)); (iv) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(b)(7)); (v) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and

<sup>77</sup> In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. See generally Regulatory Notice 17-30 (October 2017) (announcing FINRA’s adoption of consolidated rules governing qualification and registration).



2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4<sup>78</sup> (proposed Rule 3110.19(b)(8)); or (vi) one or more associated persons at a location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board (proposed Rule 3110.19(b)(9)).

FINRA believes that an associated person designated at such location should have more than one year of supervisory experience with the member and have passed the appropriate principal level qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). In addition, FINRA believes that the imposition of a mandatory heightened supervisory plan and the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.

<sup>78</sup> Form U4's Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures.

A private residence meeting the description of any one of the categories in proposed Rule 3110.19(b) would be ineligible for designation as a Residential Supervisory Location, even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private residence as an OSJ or branch office, as applicable, unless the location meets a branch office exclusion under Rule 3110(f)(2). FINRA believes the proposed list of ineligibility categories is appropriately derived from existing rule-based criteria that already have a process to identify firms that may pose greater concern (e.g., Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are sensible and consistent with a reasonably designed supervisory system while still promoting investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the conditions described above should not require registration as branch offices. The proposed Residential Supervisory Location is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing

obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.<sup>79</sup>

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 90 days following the publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>80</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while

<sup>79</sup> See Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78o(b)(6)(A).

<sup>80</sup> 15 U.S.C. 78o-3(b)(6).

retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**Economic Impact Assessment**

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

A. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time

on-site in a conventional office setting, and some may work on-site full time.<sup>81</sup> Absent the proposed rule change, when the temporary relief from the requirement to submit branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

B. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns. In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support

<sup>81</sup> According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home between two and three days per week. See Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, SWAA April 2022 Updates (April 11, 2022), [https://wfhresearch.com/wp-content/uploads/2022/04/WFHResearch\\_updates-April-2022.pdf](https://wfhresearch.com/wp-content/uploads/2022/04/WFHResearch_updates-April-2022.pdf). The number of expected work-from-home days post-pandemic has been increasing steadily since the January 2021 survey. The SWAA is monthly survey with respondents that are working-age persons in the United States that had earnings of at least \$20,000 in 2019. Further details about this survey can be found at <https://wfhresearch.com>.

supervision in the remote work environment.<sup>82</sup> These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in Notice 20-08. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that, going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location. As discussed above, a location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of April 30, 2022, FINRA's membership included 3,365 firms<sup>83</sup> with 151,463 registered branch offices. Of these branch offices, 18,290 (12%) are OSJs, with 1,910 of

<sup>82</sup> The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. See McKinsey & Company, How COVID-19 has pushed companies over the technology tipping point—and transformed business forever, October 5, 2020, <https://mck.co/3n1K8b2>.

<sup>83</sup> This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

them identified as private residences.<sup>84</sup> There are 21,647 principal level registered persons serving as OSJ supervisors, with 1,775 (8%) working at OSJs identified as private residences.<sup>85</sup> Data on the number of residential locations at which supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in Notice 20-08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these member firms account for most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

#### C. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of

<sup>84</sup> The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm's location as a branch office. Form BR's Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a "Private Residence Checkbox." The number of OSJs is derived from Form BR's Section 2 (Registration/Notice Filing/Type of Office/Activities), which requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA's records from Form U4 show that, altogether, there are about 138,035 registered persons with principal registration categories (including those in OSJ supervisory roles).

<sup>85</sup> In addition, FINRA member firms with a single branch account for 1,744 of these OSJs and 1,967 of the supervisors. Forty-three FINRA member firms do not have any branches registered; these firms are all small member firms and not counted among the 3,365 firms.

residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch locations have increased by 12,921 (53%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 1,910 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone



would depend on specific information about the activities at residential locations that these forms do not provide.<sup>86</sup>

Table 1 Numbers of Offices and Locations, Pre-Pandemic and Current

	December 31, 2019	April 30, 2022
Registered branch locations	152,682	151,463
<i>OSJs</i>	19,123	18,290
<i>Non-OSJs</i>	134,559	133,173
Non-branch locations	56,317	66,054
<i>Residential non-branch locations</i>	24,369	37,290

#### *Anticipated Benefits*

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

The proposed rule change, also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential Supervisory Location on a full or part time basis, and possibly an increase in the number

<sup>86</sup> Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4 (e.g., use “St.” on one and “Street” on another).

of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional positions.<sup>87</sup> The expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.<sup>88</sup> Technology has been used not only to make remote work possible but also to conduct a range of compliance and regulatory risk management activities. By facilitating hybrid work arrangements, the proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.

<sup>87</sup> See note 81, supra. See also Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, Why Working from Home Will Stick (NBER Working Paper 28731, April 2021), <https://wfhrefsearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf>, who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, Work from Home Before and After the COVID-19 Outbreak, (Working Paper, February 2022), [https://karelmertenscom.files.wordpress.com/2022/02/wfh\\_feb17\\_2022\\_paper.pdf](https://karelmertenscom.files.wordpress.com/2022/02/wfh_feb17_2022_paper.pdf) who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10.

<sup>88</sup> See note 82, supra.

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees. However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a “branch office,” and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

*Anticipated Costs*

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation

because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

#### D. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as

Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

5. **Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were neither solicited nor received.

6. **Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>89</sup>

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

<sup>89</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2022-019)

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)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

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 office of supervisory jurisdiction (“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 safeguards and limitations. In accordance with Rule 3110(c), as a non-branch

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,<sup>3</sup> rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>4</sup>

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are bracketed.

\* \* \* \* \*

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

••• Supplementary Material: -----

.01 through .17 No Change.

.18 Reserved.

.19 Residential Supervisory Location

<sup>3</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

<sup>4</sup> SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (i.e., non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>, and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (“SLB 17”) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices), <https://www.sec.gov/interp/leg/mrslb17.htm>.

(a) Residential Supervisory Location. Notwithstanding any other provisions of Rule 3110(f), and subject to paragraph (b) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, including those described in Rule 3110(f)(1)(D) through (G) or in Rule 3110(f)(2)(B), shall be considered for those activities a non-branch location, provided that:

(1) 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;

(2) the location is not held out to the public as an office;

(3) the associated person does not meet with customers or prospective customers at the location;

(4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii);

(5) neither customer funds nor securities are handled at that location;

(6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

(8) all electronic communications by the associated person at that location are made through the member's electronic system;

(9) a list of the residence locations is maintained by the member; and



(10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

(b) Ineligible Locations

A location shall not be eligible for designation as a non-branch location in accordance with Rule 3110.19 if:

(1) the member is designated as a Restricted Firm under Rule 4111;

(2) the member is designated as a Taping Firm under Rule 3170;

(3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location;

(4) 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;

(5) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04;

(6) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency;

(7) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan

under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association;

(8) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; or

(9) one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the MSRB.

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II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Early in 2020, the COVID-19 pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.<sup>5</sup> In response to the pandemic, many private and government employers closed their offices and allowed their employees to work from alternative worksites (e.g., an employee’s residence). As jurisdictions scale back pandemic-related restrictions,<sup>6</sup> many member firms are moving towards a blended workforce model,

<sup>5</sup> Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, 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. See Regulatory Notice 20-08 (March 2020) (“Notice 20-08”). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040). FINRA Rule 3110.17 expires on December 31, 2022. See Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001).

<sup>6</sup> See, e.g., Government of the District of Columbia, Mayor’s Order 2022-029 (February 14, 2022) (announcing the end of the indoor mask mandate at certain venues effective March 1, 2022; and the end of the requirement for certain private venues to check vaccination status effective February 14, 2022); State of New York, “Winter Toolkit for New Phase of COVID Response: Keep New York

whereby employees work both on-site in a conventional office setting and remotely in an alternative location such as a private residence. Based on feedback from member firms, FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. These dynamics have persuaded FINRA to review aspects of Rule 3110 that may benefit from modernization.<sup>7</sup> The changes brought forth by the pandemic merit a reevaluation of the regulatory benefit of requiring firms to designate a private residence where lower risk activities are conducted as an OSJ or branch office. In recognition of the significant technology and industry changes that

Safe, Open and Moving Forward” (Governor Kathy Hochul lifting the statewide indoor business mask-or-vaccine requirement starting on February 10, 2022, and remaining optional for businesses, local governments and counties to enforce) (February 9, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-winter-toolkit-new-phase-covid-response-keep-new-york-safe-open-and>; and State of California, Office of Governor Gavin Newsom, “Governors Newsom, Brown and Inslee Announce Updated Health Guidance,” (announcing that on March 11, 2022, California, Oregon and Washington to adopt new indoor mask policies and move from mask requirements to mask recommendations in schools) (February 28, 2022).

<sup>7</sup> In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. See generally Special Notices to Members 01-35 (May 2001) (“Notice 01-35”) (requesting comment on steps that can be taken to streamline FINRA rules) and 02-10 (January 2002) (“Notice 02-10”) (requesting information on steps that can be taken to streamline FINRA rules). See also Regulatory Notice 14-14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s communications with the public rules) and Regulatory Notice 14-15 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA’s gifts, gratuities and non-cash compensation rules), both launching FINRA’s Retrospective Rule Review Program.

are impacting workplace arrangements, FINRA is proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (i.e., an unregistered office), subject to specified investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>8</sup>

#### Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (e.g., rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,<sup>9</sup> an OSJ was defined as "any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[.]" and a branch office was one that was "owned or controlled by a member, and

<sup>8</sup> See note 3, supra.

<sup>9</sup> FINRA (then NASD) adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

which is engaged in the investment banking or securities business.”<sup>10</sup> Further, a place of business of a member firm’s associated person was considered a branch office if the member: “(1) directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes.”<sup>11</sup> In addition, such location was a branch office if the member “authorizes a listing in any publication or any other media, including a professional dealer’s digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office.”<sup>12</sup> The term “branch office” was established “merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid.”<sup>13</sup>

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting

<sup>10</sup> See Notice to Members 87-41 (June 1987) (“Notice 87-41”) (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

<sup>11</sup> See Notice 87-41.

<sup>12</sup> See Notice 87-41.

<sup>13</sup> See Notice 87-41.

examinations that readily identified the appropriate individuals and records at a firm. In response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms' associated persons engaging in the offer and sale of securities to the public without adequate ongoing supervision and regular examination by member firms.<sup>14</sup> The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on "the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]"<sup>15</sup> The newly amended OSJ definition focused on an office at which "the approval [of specified functions] that constitutes formal action by the member takes place."<sup>16</sup> The amendments also added more prescriptive requirements

<sup>14</sup> See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31). See also Notice to Members 88-84 (November 1988) ("Notice 88-84") (announcing SEC approval of File No. SR-NASD-88-31).

<sup>15</sup> See Notice to Members 88-11 (February 1988) ("Notice 88-11") (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

<sup>16</sup> See Notice 88-11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: "(1) Order execution and/or market making; (2) Structuring of public offerings or private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(1) of the Rules of Fair Practice; or

with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.<sup>17</sup>

With respect to the branch office definition, the amendments also refined it from any location "owned or controlled by a member, and which [was] engaged in the investment banking or securities business"<sup>18</sup> to "any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location."<sup>19</sup>

(7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member." See Notice 88-84.

<sup>17</sup> See Notice 88-84. See generally Rule 3110(a) and (b).

<sup>18</sup> See Notice 87-41.

<sup>19</sup> See Notice 88-84.



These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.<sup>20</sup> The amendments required a "minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities."<sup>21</sup> In addition, the revisions required OSJ designation for "any office at which the approval that constitutes formal action by the member takes place."<sup>22</sup> Further, FINRA noted that the enhancements to the supervisory practices and definitions reflected its "continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation."<sup>23</sup> FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (e.g., account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format, not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office registration.<sup>24</sup> FINRA noted that the exclusions were intended as a reasonable

<sup>20</sup> See Notice 87-41.

<sup>21</sup> See Notice 87-41.

<sup>22</sup> See Notice 88-11.

<sup>23</sup> See Notice 88-11.

<sup>24</sup> In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone

accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.<sup>25</sup> In the approval order, the Commission recognized that the amended definition would eliminate the requirement to register as a branch office unless the securities activity at the office required “continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules.”<sup>26</sup>

In 2001, FINRA launched an initiative to modernize its rules.<sup>27</sup> Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization in light of the SEC’s amendment to the term “office” in the SEC’s Books and Records Rules,<sup>28</sup> the branch office definition used by the New York Stock Exchange (“NYSE”) and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform

number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>25</sup> See Notice to Members 92-18 (April 1992) (announcing SEC approval of File No. SR-NASD-91-42).

<sup>26</sup> See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>27</sup> See Notice 01-35.

<sup>28</sup> 17 CFR 240.17a-3 and 240.17a-4. See generally Notice to Members 01-80 (December 2001) (describing amendments to the SEC Books and Records Rules).

branch office registration system.<sup>29</sup> FINRA expressly noted that a factor to be considered in modernizing rules included instances “where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies.”<sup>30</sup>

Until 2005, member firms were required to complete Schedule E to the Form BD (“Schedule E”) to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, the North American Securities Administrators Association, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.<sup>31</sup> Moreover, the adoption of a uniform definition facilitated the development of

<sup>29</sup> See Notice 02-10.

<sup>30</sup> See Notice 01-35.

<sup>31</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR-NASD-2003-104).

a centralized branch office registration system through the Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.<sup>32</sup> With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number by the system, the individuals assigned to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

By the 1990s, technology had progressed with the advent of faster internet, wifi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's Books and Records Rules,<sup>33</sup> which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM-

<sup>32</sup> See Form BR.

<sup>33</sup> See note 28, supra.

3010-1 (Standards for Reasonable Review) (now Rule 3110.12 (Standards for Reasonable Review)), as a further safeguard. It clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions can be exempt from registration, subject to specified conditions, without compromising a

reasonably designed supervisory system. Moreover, FINRA believes 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. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR (Uniform Branch Office Registration Form) and other uniform registration forms.<sup>34</sup>

FINRA Rule 3110 and Current Requirements to Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule categorizes offices or locations as an OSJ or supervisory branch office,

<sup>34</sup> For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's "Office of Employment Address" is an unregistered location, the firm must report the address of such location as the individual's "located at" address and must report the branch office that supervises that non-registered location as the "supervised from" location. See Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. See Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/Websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. See Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing/Type of Office/Activities), Item D.

a non-supervisory branch office, or a non-branch location.<sup>35</sup> The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below.<sup>36</sup>

OSJs are a subset of branch offices. Rule 3110(f)(2) defines a “branch office” as “any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]”<sup>37</sup> In addition, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (i.e., a supervisory branch office).<sup>38</sup> A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.<sup>39</sup>

<sup>35</sup> See FINRA Rule 3110(c).

<sup>36</sup> See FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. See Section 2 of Form BR, requiring the applicant to indicate whether an office is a “FINRA OSJ” or “non-OSJ branch,” <https://www.finra.org/sites/default/files/web-crd-form-br-filing.pdf>.

<sup>37</sup> See FINRA Rule 3110(f)(2)(A).

<sup>38</sup> See FINRA Rule 3110(f)(2)(B).

<sup>39</sup> See FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member’s business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers’ funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2);<sup>40</sup> (6) final approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports;<sup>41</sup> or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.<sup>42</sup>

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices

<sup>40</sup> FINRA Rule 3110(b)(2) pertains to the review of a member’s investment banking and securities business and provides that “[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business of the member.”

<sup>41</sup> In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.

<sup>42</sup> See FINRA Rules 3110(a)(4) and 3110(c)(1)(A).



or non-branch locations—of which two pertain to residential locations.<sup>43</sup> One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person’s primary residence subject to the following express conditions: (1) 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; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with the Rule; (6) electronic communications (e.g., email) are made through the member’s electronic system; (7) all orders are entered through the designated branch office or an electronic system

<sup>43</sup> See generally FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member (“primary residence exclusion”).<sup>44</sup> The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above (“non-primary residence exclusion”). In general, the non-primary residence exclusion typically refers to a vacation or second home.<sup>45</sup> A non-branch location must be inspected on a periodic schedule, presumed to be at least every three years.<sup>46</sup>

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),<sup>47</sup> a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office,

<sup>44</sup> See FINRA Rule 3110(f)(2)(ii)a. through i.

<sup>45</sup> See Notice to Members 06-12 (March 2006) (“Notice 06-12”).

<sup>46</sup> See note 3, supra.

<sup>47</sup> See note 43, supra.

respectively.<sup>48</sup> Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.<sup>49</sup>

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the NYSE and other self-regulatory organizations (“SROs”), and state securities regulators, and it has been in place since 2005 (collectively, the “uniform branch office definition”).<sup>50</sup> The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and limitations such as those appearing in the primary residence exclusion.<sup>51</sup> In the approval order for the uniform branch office definition, the Commission noted that the limitations for the primary residence exclusion “closely track the limitations on the use of a private residence in the Books and Records Rules.”<sup>52</sup> The Commission also stated that the seven exclusions “recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for

<sup>48</sup> See FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

<sup>49</sup> See note 42, supra.

<sup>50</sup> See note 31, supra.

<sup>51</sup> See generally Notice to Members 05-67 (October 2005).

<sup>52</sup> See 70 FR 54782, 54783 (citation omitted).

certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.”<sup>53</sup> Further, the Commission stated that “[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer members.”<sup>54</sup> Finally, the Commission expressed the view that the uniform branch office definition “strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.”<sup>55</sup> FINRA believes that the Commission’s statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

<sup>53</sup> See 70 FR 54782, 54787. See also Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR-NYSE-2002-34) (stating, “the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.”).

<sup>54</sup> See 70 FR 54782, 54787.

<sup>55</sup> See note 53, *supra*.

### Impact of New Workplace Models

As noted above, many employers closed their offices and moved to a broad remote work environment to contend with the public health crisis. In response, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,<sup>56</sup> and discussions with FINRA’s advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do so in some manner in the current environment.<sup>57</sup> These technological tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or applications, and electronic communications, including video conferencing tools.<sup>58</sup> In addition, some firms have further noted that the flexibility

<sup>56</sup> See, e.g., Submitted Comments to Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001), <https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm>; and Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019), <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm>.

<sup>57</sup> See generally Regulatory Notice 21-44 (December 2021).

<sup>58</sup> See generally Regulatory Notice 20-16 (May 2020); see also FINRA White Paper, Technology Based Innovations for Regulatory Compliance (“RegTech”) in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

remote work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>59</sup>

As pandemic-related restrictions are easing,<sup>60</sup> many member firms are moving towards a blended workforce model for their employees, consisting of working on-site in a conventional office setting and working remotely in an alternative location such as a private residence. Similar to the changed environment underlying the Commission's approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence as an OSJ or branch office should now be reconsidered where the risk profile of these offices can be effectively controlled through practically based safeguards and limitations. FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

<sup>59</sup> See generally Submitted Comments to Regulatory Notice 20-42 (December 2020), <https://www.finra.org/rules-guidance/notices/20-42#comments>.

<sup>60</sup> See note 6, supra.

Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of a Residential Supervisory Location would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>61</sup>

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion<sup>62</sup> as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.<sup>63</sup> In addition, FINRA is proposing to further augment the safeguards and limitations to describe the locations that would be ineligible to rely on proposed Rule 3110.19.

<sup>61</sup> See note 3, supra.

<sup>62</sup> See Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f., and i.

<sup>63</sup> See, e.g., Notice 06-12.

A. Safeguards and Conditions to Rely on the Residential Supervisory Location Exclusion (Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those currently required for the primary residence and non-primary residence exclusions. FINRA is proposing to add one new condition to a Residential Supervisory Location: a restriction from maintaining original books and records at such location.

Under proposed Rule 3110.19(a), any such location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) 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 (proposed Rule 3110.19(a)(1));<sup>64</sup> (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));<sup>65</sup> (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));<sup>66</sup> (4) no sales activity takes place at the location other than as permitted and subject to the conditions

<sup>64</sup> See Rule 3110(f)(2)(A)(ii)a. (“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[.]”).

<sup>65</sup> See Rule 3110(f)(2)(A)(ii)b. (“The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]”).

<sup>66</sup> See note 65, supra.



set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));<sup>67</sup> (5) neither customer funds nor securities are handled at that location (proposed Rule 3110.19(a)(5));<sup>68</sup> (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));<sup>69</sup> (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110 (proposed Rule 3110.19(a)(7));<sup>70</sup> (8) all electronic communications by the associated person at that location are made through the member's electronic system (proposed Rule 3110.19(a)(8));<sup>71</sup> (9) a list of the residence locations is maintained by the member (proposed Rule 3110.19(a)(9));<sup>72</sup> and (10) all books or records required to be

<sup>67</sup> An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

<sup>68</sup> See Rule 3110(f)(2)(A)(ii)c. ("Neither customer funds nor securities are handled at the location[.]").

<sup>69</sup> See Rule 3110(f)(2)(A)(ii)d. ("The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]").

<sup>70</sup> See Rule 3110(f)(2)(A)(ii)e. ("The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule[.]").

<sup>71</sup> See Rule 3110(f)(2)(A)(ii)f. ("Electronic communications (e.g., e-mail) are made through the member's electronic system[.]").

<sup>72</sup> See Rule 3110(f)(2)(A)(ii)i. ("A list of the residence locations is maintained by the member[.]").

made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location (proposed Rule 3110.19(a)(10)).

FINRA notes that the proposed conditions are substantially similar to those applied to the current primary and non-primary residence exclusions, and are supplemented by a proposed additional condition that would preclude a firm from maintaining any books or records required to be made and preserved by the member under the federal securities laws or FINRA rules at the Residential Supervisory Location. FINRA believes that this proposed new limitation would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be maintained on-site. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales activities are permitted currently under such exclusions. As previously noted, the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.<sup>73</sup> As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations.

<sup>73</sup> 17 CFR 240.17a-4(l); see also note 31, supra.

As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.<sup>74</sup>

B. Ineligible Locations (Proposed Rule 3110.19(b))

FINRA is further proposing several location categories that are ineligible for designation as a Residential Supervisory Location. The nine proposed categories of ineligibility are events or activities of a member firm or its associated persons that FINRA believes are more likely to raise investor protection concerns based on FINRA rules, an associated person's level of supervisory experience with the member firm or qualifications, or an associated person's record of specified regulatory or disciplinary events.

1. Member Firm Ineligibility

Under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, non-branch location, in accordance with Rule 3110.19 if: (i) the member is designated as a "Restricted Firm" under Rule 4111 (Restricted Firm Obligations)<sup>75</sup> (proposed Rule 3110.19(b)(1)); (ii) the member is designated as a "Taping Firm" under Rule 3170 (Tape Recording of Registered Persons by Certain Firms)<sup>76</sup> (proposed Rule 3110.19(b)(2)); or (iii) the member is currently

<sup>74</sup> See note 3, *supra*.

<sup>75</sup> In general, Rule 4111 requires member firms that are identified as "Restricted Firms" to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. See generally Regulatory Notice 21-34 (September 2021) (announcing FINRA's adoption of rules to address firms with a significant history of misconduct).

<sup>76</sup> In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has

undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location<sup>77</sup> (proposed Rule 3110.19(b)(3)). These rules expressly account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19(a).

## 2. Associated Person Ineligibility

In addition, under proposed Rule 3110.19(b), a location would be ineligible for designation as a Residential Supervisory Location, a non-branch location, in accordance with proposed Rule 3110.19 where: (i) 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 (proposed Rule 3110.19(b)(4)); (ii) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04<sup>78</sup> (proposed Rule 3110.19(b)(5)); (iii) one or more associated persons at such

hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170's definition of "disciplined firm." See generally Regulatory Notice 14-10 (March 2014) (announcing FINRA's adoption of consolidated rules governing supervision).

<sup>77</sup> Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more defined "final criminal matters" or two or more "specified risk events" unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person's current member firm or at a new member firm. See generally Regulatory Notice 21-09 (March 2021) (announcing FINRA's adoption of rules to address brokers with a significant history of misconduct).

<sup>78</sup> In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. See generally Regulatory Notice 17-30 (October 2017)

location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(b)(6)); (iv) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(b)(7)); (v) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4<sup>79</sup> (proposed Rule 3110.19(b)(8)); or (vi) one or more associated persons at a location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board (proposed Rule 3110.19(b)(9)).

(announcing FINRA’s adoption of consolidated rules governing qualification and registration).

<sup>79</sup> Form U4’s Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures.

FINRA believes that an associated person designated at such location should have more than one year of supervisory experience with the member and have passed the appropriate principal level qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). In addition, FINRA believes that the imposition of a mandatory heightened supervisory plan and the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.

A private residence meeting the description of any one of the categories in proposed Rule 3110.19(b) would be ineligible for designation as a Residential Supervisory Location, even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private residence as an OSJ or branch office, as applicable, unless the location meets a branch office exclusion under Rule 3110(f)(2). FINRA believes the proposed list of ineligibility categories is appropriately derived from existing rule-based criteria that already have a process to identify firms that may pose greater concern (e.g., Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are

sensible and consistent with a reasonably designed supervisory system while still promoting investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the conditions described above should not require registration as branch offices. The proposed Residential Supervisory Location is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.<sup>80</sup>

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 90 days following the publication of the Regulatory Notice announcing Commission approval.

<sup>80</sup> See Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78o(b)(6)(A).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>81</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>81</sup> 15 U.S.C. 78o-3(b)(6).



### Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

#### 1. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time on-site in a conventional office setting, and some may work on-site full time.<sup>82</sup> Absent the proposed rule change, when the temporary relief from the requirement to submit branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would

<sup>82</sup> According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home between two and three days per week. See Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, SWAA April 2022 Updates (April 11, 2022), [https://wfhresearch.com/wp-content/uploads/2022/04/WFHResearch\\_updates-April-2022.pdf](https://wfhresearch.com/wp-content/uploads/2022/04/WFHResearch_updates-April-2022.pdf). The number of expected work-from-home days post-pandemic has been increasing steadily since the January 2021 survey. The SWAA is monthly survey with respondents that are working-age persons in the United States that had earnings of at least \$20,000 in 2019. Further details about this survey can be found at <https://wfhresearch.com>.

reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

## 2. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns. In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support supervision in the remote work environment.<sup>83</sup> These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in Notice 20-08. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that, going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location. As discussed above, a location registered as a branch office must have one or more

<sup>83</sup> The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. See McKinsey & Company, How COVID-19 has pushed companies over the technology tipping point—and transformed business forever, October 5, 2020, <https://mck.co/3nlK8b2>.

appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of April 30, 2022, FINRA's membership included 3,365 firms<sup>84</sup> with 151,463 registered branch offices. Of these branch offices, 18,290 (12%) are OSJs, with 1,910 of them identified as private residences.<sup>85</sup> There are 21,647 principal level registered persons serving as OSJ supervisors, with 1,775 (8%) working at OSJs identified as private residences.<sup>86</sup> Data on the number of residential locations at which supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in Notice 20-08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these

<sup>84</sup> This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

<sup>85</sup> The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm's location as a branch office. Form BR's Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a "Private Residence Checkbox." The number of OSJs is derived from Form BR's Section 2 (Registration/Notice Filing/Type of Office/Activities), which requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA's records from Form U4 show that, altogether, there are about 138,035 registered persons with principal registration categories (including those in OSJ supervisory roles).

<sup>86</sup> In addition, FINRA member firms with a single branch account for 1,744 of these OSJs and 1,967 of the supervisors. Forty-three FINRA member firms do not have any branches registered; these firms are all small member firms and not counted among the 3,365 firms.

member firms account for most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

### 3. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch locations have increased by 12,921 (53%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 1,910 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the

thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone would depend on specific information about the activities at residential locations that these forms do not provide.<sup>87</sup>

Table 1 Numbers of Offices and Locations, Pre-Pandemic and Current

	December 31, 2019	April 30, 2022
Registered branch locations	152,682	151,463
OSJs	19,123	18,290
Non-OSJs	134,559	133,173
Non-branch locations	56,317	66,054
Residential non-branch locations	24,369	37,290

#### Anticipated Benefits

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

<sup>87</sup> Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4 (e.g., use “St.” on one and “Street” on another).

The proposed rule change, also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential Supervisory Location on a full or part time basis, and possibly an increase in the number of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional positions.<sup>88</sup> The expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.<sup>89</sup> Technology has been used not only to make remote work possible but also to conduct a range of compliance and

<sup>88</sup> See note 82, supra. See also Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, Why Working from Home Will Stick (NBER Working Paper 28731, April 2021), <https://wfhrefsearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf>, who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, Work from Home Before and After the COVID-19 Outbreak, (Working Paper, February 2022), [https://karelmertenscom.files.wordpress.com/2022/02/wfh\\_feb17\\_2022\\_paper.pdf](https://karelmertenscom.files.wordpress.com/2022/02/wfh_feb17_2022_paper.pdf) who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10.

<sup>89</sup> See note 83, supra.

regulatory risk management activities. By facilitating hybrid work arrangements, the proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees. However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a “branch office,” and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

#### Anticipated Costs

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may

incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

#### 4. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA



considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2022-019 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2022-019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-019 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>90</sup>

Jill M. Peterson  
Assistant Secretary

<sup>90</sup> 17 CFR 200.30-3(a)(12).



**Kosha Dalal**  
Vice President and Associate General Counsel  
Office of General Counsel

Direct: (202) 728-6903  
Fax: (202) 728-8264

October 31, 2022

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2022-019 – Proposed Rule Change to Adopt  
Supplementary Material .19 (Residential Supervisory Location) under FINRA  
Rule 3110 (Supervision)**

Dear Ms. Countryman:

The Financial Industry Regulatory Authority (“FINRA”) submits this letter in response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing (the “Proposal”) to amend Rule 3110 to add new Supplementary Material .19 (Residential Supervisory Location) (“RSL”). The Proposal would align FINRA’s definition of an office of supervisory jurisdiction (“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 specified safeguards and limitations.

The Commission published the Proposal for public comment in the Federal Register on August 2, 2022.<sup>1</sup> The Commission received 26 comment letters in response to the Proposal.<sup>2</sup> Twenty-four comment letters express strong support for the overall intent of the Proposal, noting general appreciation for the SEC’s and FINRA’s responsiveness during the COVID-19 pandemic. SIFMA states that the SEC and FINRA “have been outstanding partners in coordinating with the industry and responding to the various challenges presented by COVID-19.” Many commenters further express strong support for FINRA’s

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<sup>1</sup> See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019).

<sup>2</sup> See Attachment A for the list of commenters.

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willingness to evolve its longstanding branch office definition based on lessons learned during the COVID-19 pandemic and evolving technology and workforce arrangements. Schwab states that the Proposal “would provide such a solution by modernizing the Supervision rule through aligning 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 safeguards and limitations.”

Virtu also commends FINRA’s efforts to modernize Rule 3110, but conveys that the Proposal does not go far enough. Many commenters also note the positive impact the Proposal will have on workplace flexibility, and hiring efforts that enhance talent recruitment and retention in the financial industry, particularly with respect to diversity and inclusion initiatives.<sup>3</sup>

Two commenters—NASAA and PIABA—are critical of the Proposal and oppose it on the basis that the Proposal will adversely impact investor protection. NASAA believes FINRA has not explained adequately why the frequency of inspections of supervisory offices should be reduced.

FINRA is not proposing to amend the Proposal in response to the comments. The following are FINRA’s responses to the material issues raised by commenters.<sup>4</sup>

Supervision of Associated Persons in Dispersed (Remote) Offices and Locations,  
Hybrid Work Environment – Reliance on Technology

Although the concept of the hybrid (or flexible) work model is not new, the COVID-19 pandemic compelled many employers across the U.S. to shift to the model broadly. In general, commenters indicate that the ability to work in a hybrid manner has

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<sup>3</sup> See Cetera, CFN, HIC, LPL, MMLIS, Raymond James, Schwab, Smith.

<sup>4</sup> FINRA notes that the comment letters from ASA, Group of 16, LPL (supplemental comment letter), NASAA and SIFMA (supplemental comment letter) for this Proposal are the same as the comment letters they each submitted in response to FINRA’s proposed rule change relating to a proposed pilot program for remote inspections. See Securities Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021) (“Pilot Proposal”), <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021.htm>.

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become an important tool for firms to retain qualified individuals in the financial services industry and recruit diverse talent from broad areas of the country.<sup>5</sup>

Many commenters convey the general view that advances in technology have facilitated remote supervision, with some commenters describing the technology that is used to effectively supervise their employees irrespective of their location.<sup>6</sup> Examples include the use of information barriers to safeguard and restrict the flow of confidential and material, non-public information; technology barriers to restrict and control employee access to systems and databases; internal email blocks; internet and social media reviews for evidence of outside business activities or private securities transactions; programs or operating systems to enable firms to conduct computer desktop reviews from another location; web-based communication platforms to communicate with registered persons; video conferencing technology; a centralized repository to retain electronic communications; software (e.g., DocuSign) to enable customers to digitally sign contracts and other documents such as client attestations and new account documents.<sup>7</sup>

The Proposal recognizes the continued evolution of the workforce model, along with ongoing advances in technology, while adopting appropriate safeguards and limitations that would continue to require member firms to supervise all of their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with FINRA By-Laws and rules.<sup>8</sup> NASAA and PIABA, however, fundamentally question the ability of firms to supervise their associated persons who work from remote offices or locations. NASAA states that the Proposal is “improvident at best” and could lead to investor harm. PIABA similarly states that the Proposal runs counter to FINRA’s objective of investor protection.

More specifically, PIABA contends that the existing supervisory structure of remote offices “commonly leads to rogue brokers’ and advisors’ poor conduct continuing unmolested for extended periods of time.” PIABA adds that the Proposal would “provide additional opportunities for a broker to engage in fraudulent conduct without a supervisor or auditor adequately supervising the broker’s conduct.” Citing a number of cases involving misconduct that occurred as early as 1989, PIABA concludes that they demonstrate that “member firms have been and remain unable or unwilling to effectively supervise remote offices” and illustrate supervisory systems that were deficient.<sup>9</sup> However,

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<sup>5</sup> See Cetera, CFN, HIC, LPL, MMLIS, Raymond James, Schwab, Smith.

<sup>6</sup> See ASA, Dirico, HIC, Integrated Solutions, LPL, Schwab, SIFMA, Virtu, WFC.

<sup>7</sup> See Canaccord, HIC, Schwab, WFC, Virtu.

<sup>8</sup> See Proposal, 87 FR 47248, 47256.

<sup>9</sup> See, e.g., Hailey v. Westpark Capital, Inc., FINRA Case No. 20-00320, 2021 FINRA ARB. LEXIS 652, \*10 (May 25, 2021) (noting, among other things, that an

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as further discussed below, FINRA disagrees with PIABA's overbroad conclusion that member firms generally are unable or unwilling to effectively supervise their associated persons in remote, dispersed offices.

Notwithstanding that Rule 3110(f)(2)(A) currently allows associated persons to work from non-branch locations that are residential locations,<sup>10</sup> NASAA expresses concerns about home work locations, asserting that unlike a traditional office space, a residential work location is not a controlled environment and has shortcomings in areas that include cybersecurity, records storage, and communications with customers outside of firm systems, and that any discussions pertaining to the custody of customer securities or funds in a home office should be viewed with skepticism. NASAA doubts that firms can effectively ensure the use of firm systems and, more generally, questions whether technological advancements cited by FINRA are being used by firms or can effectively control the activities of persons working remotely.

NASAA also contends that the Proposal would "alter the basic nature of firm supervision" and questions whether electronic monitoring has advanced enough to allow the industry to risk replacing supervision, including in-person inspections, with "unspecified technological alternatives." Further, NASAA states that the Proposal does not describe the technologies being employed to conduct effective remote surveillance, nor does it detail why technological advances support lengthening the inspection frequency of supervisory offices. NASAA states that supervisory functions are more critical where individuals are working from dispersed locations and more challenging because supervisors have less direct contact with their supervised persons.

While FINRA notes NASAA's and PIABA's concerns about the supervision of associated persons in the hybrid work environment and technology's role in facilitating effective supervision, the shift in workplace models to a more hybrid workforce and advancements in technology to enhance supervision have been taking place for many years. Home offices are permitted under current FINRA rules and have been effectively used by firms for decades.<sup>11</sup> FINRA believes that home offices can be effectively supervised under this Proposal, and the proposed limitations on which locations would qualify to be designated as an RSL provide important safeguards to allow the frequency of inspections potentially to be reduced only for lower risk locations.

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individual who was banned from the securities industry for participating in Ponzi scheme, was hired by the firm to conduct the on-site inspection of the home of an associated person).

<sup>10</sup> See Rule 3110(f)(2)(A)(ii) and (iii).

<sup>11</sup> See note 10, *supra*.

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In this regard, FINRA re-emphasizes that the Proposal does not change the existing obligation for firms to reasonably supervise their associated persons on an ongoing basis under Rule 3110 generally. The Proposal impacts the periodicity of inspections under Rule 3110(c)—one component of a reasonably designed supervisory system—of specified residential locations, subject to important conditions. Those conditions confine RSL eligibility to a limited range of lower risk supervisory functions that associated persons engage from their private residences, subject to many of the same safeguards and conditions applied today to the residential non-branch locations under Rule 3110(f)(2)(A).<sup>12</sup>

FINRA believes that this combination of attributes, alongside the technology that is already used to supervise, monitor, and review the activities of associated persons who work from non-branch locations, merit classifying these RSLs as non-branch locations that would still be subject to a regular periodic inspection schedule. As stated in the Proposal and affirmed by several commenters, FINRA believes that the accessibility of digital technologies (e.g., video conferencing, cloud services, virtual private networks) have, in fact, provided effective new tools and methods by which a firm may meet its obligations to supervise the activities of each associated person, regardless of location, compensation or employment arrangement, or registration status, in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. The Proposal maintains the core principle of Rule 3110 for a member firm to have a reasonably designed supervisory system to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As explained in prior guidance, the “reasonably designed” standard “recognizes that a supervisory system cannot guarantee firm-wide compliance with all laws and regulations. However, this standard does require that the system be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member’s business[.]”<sup>13</sup>

#### Breadth of RSL Activities

As proposed, an RSL would be an associated person’s private residence at which specified supervisory functions occur, including those supervisory functions set forth in the

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<sup>12</sup> SIFMA observes that the Proposal uses the term “private residence” whereas Rule 3110(f)(2) uses the term “primary residence.” The Proposal’s use of “private residence” is intentional to capture residential locations generally, but the term is confined to proposed Rule 3110.19. FINRA is not proposing to alter any aspect of Rule 3110(f)(2) through this Proposal and for that reason, the distinction will remain.

<sup>13</sup> See Notice to Members 99-45 (June 1999) (providing guidance on supervisory responsibilities).



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OSJ and branch office definitions.<sup>14</sup> Based on the electronic nature of the associated activities and supervision, several commenters recommend expanding the RSL designation to include additional activities, namely order execution and market making described in Rule 3110(f)(1)(A), and structuring of public offerings or private placements described in Rule 3110(f)(1)(B), along with investment banking and trading.<sup>15</sup> Virtu suggests that all personal residences should be treated as non-branch locations at which only electronic supervisory or other securities-related activities occur. Canaccord and Fidelity explain that these activities are conducted through electronic communication and order handling systems that are easily recorded and monitored. WFC states that these activities are effectively monitored and controlled through surveillance and compliance tools, and web-based communication platforms, which are the same risk-based tools and systems that supervisory personnel use at a traditional office and private residence. WFC believes that individuals who engage in these activities should also benefit from workplace flexibility. Canaccord believes that because of the electronic nature of these activities, there is no concern about paper-based records being retained or stored at a residence. Further, through these electronic systems, Canaccord says that firms are able to remotely restrict an individual's access to trading systems or, if a trading threshold or capital level is breached, supervisory personnel will be made aware immediately to then take remedial steps. Canaccord notes that teleconference technology has improved the ability for traders to interact with each other and their supervisors on a daily basis.

FINRA appreciates these comments but declines to expand the RSL definition to include the activities described above. The proposed RSL designation does not turn only on whether an activity occurs primarily through electronic means. Instead, the Proposal reflects a number of safeguards and conditions intended to narrowly target only lower risk supervisory activities occurring from a private residence and to align those conditions with those set forth under existing Rule 3110(f)(2)(A)(ii). Longer term, FINRA expects to reassess the OSJ and branch office definitions under Rule 3110(f) more generally as part of its continued efforts to modernize FINRA rules.

#### Safeguards and Conditions

Many of the proposed safeguards and conditions for RSL designation are based on those used for the existing residential exclusions to the branch office definition. Among the 10 conditions to qualify as an RSL are the following: (1) 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 (proposed Rule 3110.19(a)(1)); (2) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110 (proposed Rule 3110.19(a)(7)); (3) the

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<sup>14</sup> See Rule 3110(f)(1)(D) through (G), and Rule 3110(f)(2)(B).

<sup>15</sup> See Canaccord, Fidelity, Virtu, WFC.

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member maintains a list of the residence locations (proposed Rule 3110.19(a)(9)); and (4) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location (proposed Rule 3110.19(a)(10)).

While PIABA generally questions the proposed safeguards and conditions, several other commenters seek to revise these proposed safeguards and conditions that must be met for a location to be designated as an RSL. Those proposed revisions are addressed below.

- *Immediate Family (Proposed Rule 3110.19(a)(1))*

Several commenters assert that the term “immediate family” is restrictive because it does not take into account more contemporary types of living arrangements (e.g., roommates, domestic partnerships), and urge FINRA to consider modernizing the concept to accommodate other living arrangements.<sup>16</sup> SIFMA states that two supervisors who reside together pose no greater risk than two supervisors of the same immediate family. Cambridge suggests removing proposed Rule 3110.19(a)(1) because it is unnecessary, noting that firms have an ongoing responsibility to supervise their associated persons. FINRA notes that the language used in proposed Rule 3110.19(a)(1) is identical to existing rule text used in the primary residence exclusion under Rule 3110(f)(2)(A)(ii)a. to align with the condition applied to the current residential exclusions to the branch office definition. For that reason, FINRA declines to remove the proposed condition as Cambridge suggests.

FINRA appreciates these comments. While the term “immediate family” is not defined under Rule 3110(f)(2), it is defined in other FINRA rules, and FINRA will consider providing additional clarity.<sup>17</sup>

- *Correspondence and Communications (Proposed Rule 3110.19(a)(7))*

NASAA asserts that the reference to “the public” is unclear and suggests changing the proposed language to read that “all correspondence and communications by the associated person related in any way to existing or potential business activities are subject

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<sup>16</sup> See CAI, Cambridge, CFN, FSI, SIFMA.

<sup>17</sup> See, e.g., paragraph (c) under FINRA Rule 3241 (Registered Person Being Named a Customer’s Beneficiary or Holding a Position of Trust for a Customer), defining “immediate family” to mean “parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent. The term includes step and adoptive relationships.”

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to the firm’s supervision in accordance with [Rule 3110].” NASAA believes that the correspondence and communications that are subject to firm supervision would be “better defined by subject, not recipient.”

FINRA notes that the proposed language aligns with existing rule text used in the primary residence exclusion under Rule 3110(f)(2)(A)(ii)e. and aligns with the terminology in FINRA Rule 2210 (Communications with the Public). To preserve efforts to maintain parity between the proposed safeguards and conditions, and those appearing under Rule 3110(f)(2)(A)(ii), FINRA declines to adjust the language in proposed condition. To adjust the language in the manner NASAA recommends would create an incongruity within Rule 3110 and raise questions about the difference in meanings.

- *List of Residence Locations (Proposed Rule 3110.19(a)(9))*

MMLIS suggests the creation of a more formal categorization or appropriate system change so firms can identify and track RSLs on the Central Registration Depository (“CRD<sup>®</sup>”).<sup>18</sup> FINRA appreciates this recommendation, but at this time, FINRA believes the documentation requirements for the Proposal suffices and is consistent with similar requirements under Rule 3110(f)(2)(A)(ii)i.

- *Books and Records (Proposed Rule 3110.19(a)(10))*

NASAA expresses concern with the phrase “other than at the location,” contending that the phrase could leave an RSL free to maintain records “outside of the firm’s central control.” To address this concern, NASAA recommends adjusting the language in proposed Rule 3110.19(a)(10) to state that all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules “are created on the member’s electronic system and are maintained on the member’s electronic or other central recordkeeping system.” NASAA believes that requiring documents to be created on firm systems would address instances where state regulators have found forged and pre-signed physical documents.

The alternative prescriptive standard NASAA suggests would impose a new obligation on firms to create and maintain records in electronic form, which may not align

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<sup>18</sup> CRD is the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other self-regulatory organizations (“SROs”), state securities regulators and broker-dealer firms. The information maintained in the CRD system is reported by registered broker-dealer firms, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See generally Rule 8312 (FINRA BrokerCheck Disclosure).

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with firms' obligations generally under the SEC's Books and Records Rules.<sup>19</sup> Among other things, the SEC's Books and Records Rules allow broker-dealers to preserve records in other forms, such as in paper form (*i.e.*, firms are not required to preserve records solely in electronic form).<sup>20</sup> Thus, FINRA declines to adjust the language in the manner NASAA recommends. Moreover, FINRA believes that proposed Rule 3110.19(a)(10), in combination with the other safeguards and conditions, appropriately lowers the overall risk profile of an RSL by precluding a firm from maintaining any books or records required to be made and preserved by the member under the federal securities laws or FINRA rules at an RSL (emphasis added).

### Ineligibility Criteria

In addition to the proposed safeguards and conditions, the Proposal would set forth nine categories that would preclude a private residence from being designated as an RSL. These categories include, among others, an associated person's qualifications, level of supervisory experience with the member firm, and an associated person's record of specified regulatory or disciplinary events.

#### *General Comments*

Several commenters question the necessity of prescriptive ineligibility criteria and recommend ways to promote greater flexibility in assessing eligibility. For example, Schwab and SIFMA suggest that the Proposal treat "ineligible locations" as a general presumption of ineligibility which would then require a firm to document deviations from the presumption in a member's written supervisory and inspection procedures, including the factors considered in such determinations. WFC contends that the criteria are duplicative of Rule 3110.12, which describes the factors a firm must consider in establishing and maintaining supervisory procedures. Raymond James suggests that the Proposal instead allow firms to establish and document their own ineligibility criteria in their written supervisory procedures and base them on the individual firm's technological

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<sup>19</sup> See SEA Rules 17a-3 and 17a-4.

<sup>20</sup> See generally Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, Securities Exchange Act Release No. 96034 (October 12, 2022) (referring to records stored in paper form or on micrographic media). FINRA also notes that where an office is a private residence, SEA Rule 17a-4(1) provides, in part, that a broker-dealer need not maintain records at the private residence, but the records must be maintained at some other location within the same State as that office as the broker-dealer chooses, or to produce those records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at an agreed upon location.

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capabilities and business models. Below is an overview of commenters' views on the ineligibility criteria.

- *One-Year Supervisory Experience with the Member (Proposed Rule 3110.19(b)(4)); Functioning as Principal for Limited Period (Proposed Rule 3110.19(b)(5))*

Proposed Rule 3110.19(b)(4) would provide that a location would be ineligible as an RSL where one or more associated persons at such location designated as a supervisor has less than one year of direct supervisory experience with the member. Several commenters express concerns about this proposed provision.<sup>21</sup> Among other things, they state that it is arbitrary, broad, or does not provide additional investor protection, and would adversely impact hiring efforts and impose administrative burdens.

Several commenters contend that the proposed criterion is too broad because it would not only apply to a newly designated supervisor with no prior supervisory experience in the industry, but also: a lateral hire with decades of prior supervisory experience at similar-sized firms; an employee of the member firm who is promoted as a designated supervisor; a designated supervisor at a firm that conducts most of its business in-person; and a designated supervisor at a firm in which nearly all personnel work full time from home under off-site supervision.<sup>22</sup>

NASAA states that while the RSL Proposal recognizes that inexperienced supervisors should not be able to operate from residential locations, “it does not make the case that more experienced supervisors are generally adept enough at remote surveillance technologies to supervise effectively. . . [i]f a supervisor cannot use technology to identify red flags effectively, then the whole paradigm that industry is promoting will fail.” Several firms believe the proposed criterion discounts the significant training and oversight of supervisory employees and is unlikely to produce an increase in investor protection in light of an individual who may have years of supervisory experience from another member firm.<sup>23</sup> Several other firms suggest removing the one-year criterion and allowing firms discretion to consider experience as part of the risk factors a firm should consider when they make determinations to designate a location as an RSL.<sup>24</sup>

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<sup>21</sup> See CAI, Cambridge, Canaccord, Cetera, CFN, Fidelity, FSI, Group of 16, MMLIS, NASAA, Raymond James, Schwab, SIFMA, WFC.

<sup>22</sup> See Cambridge, SIFMA, WFC.

<sup>23</sup> See Cetera and CFN.

<sup>24</sup> See Fidelity and FSI.

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Several commenters further state that the proposed restriction will negatively impact talent recruitment and retention by placing firms at a competitive disadvantage with non-FINRA member financial firms for recruiting and retaining talent, preventing firms from recruiting qualified individuals for supervisory roles, discouraging qualified individuals from taking on supervisory responsibilities if they are limited by the locations from which they may work, and disincentivizing individuals from taking on supervisory roles or even joining the industry.<sup>25</sup>

Some commenters highlight the administrative burden that would accompany proposed Rule 3110.19(b)(4).<sup>26</sup> These commenters explain that a firm would be required to register a location as an OSJ for a year, knowing that the firm will unregister the location after one year. Fidelity states that the one-year clock would have to restart every time a supervisor, regardless of tenure with the firm or familiarity with supervisory expectations and systems, changes broker-dealer registration.

Some commenters offer alternatives to proposed Rule 3110.19(b)(4).<sup>27</sup> For example, Fidelity suggests allowing firms to complete a risk assessment and then permitting non-producing supervisors in their first year of association with an affiliated broker-dealer to take advantage of RSL if the firm determines that the supervisory objectives of Rule 3110 can be accomplished without registering the home as an OSJ. FSI recommends removing the one-year timeframe and giving firms the discretion to consider new hires or promoted supervisors among the risk factors in planning their inspections. Rather than registering a new supervisor's private residence as an OSJ in the first year, Group of 16 suggests instead that such location undergo an inspection within the first year of RSL designation.

Similarly, proposed Rule 3110.19(b)(5) would provide that a location would be ineligible as an RSL where one or more associated persons at the location is functioning as a principal for a limited period pursuant to Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period).<sup>28</sup> Cambridge notes that Rule 1210.04 provides a way for firms to attract and retain talent while the associated person waits to pass the appropriate qualification examination. If a firm has the controls to appropriately supervise an associated person acting as a principal for a limited time, Cambridge questions why that associated person's residence would be ineligible to be

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<sup>25</sup> See MMLIS, Raymond James, Schwab and SIFMA.

<sup>26</sup> See CAI, CFN, Fidelity, FSI.

<sup>27</sup> See Fidelity, FSI, Group of 16, Schwab.

<sup>28</sup> In general, that rule permits a registered person who is designated by such person's firm to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination.

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designated as an RSL. Cambridge recommends removing proposed Rule 3110.19(b)(5) as unnecessary.

FINRA appreciates these comments to proposed Rules 3110.19(b)(4) and 3110.19(b)(5), but declines to either remove or alter these proposed criteria. FINRA believes that where an associated person lacks experience as a supervisor with a particular member or where a registered person has not yet passed the appropriate principal qualification examination, those locations should remain on an annual inspection cycle. With respect to the former, while such associated persons may have prior supervisory experience at other firms, a new supervisor at a firm may need time to become knowledgeable about the firm's systems, people, products, and overall compliance culture.

- *Associated Person's Record of Specified Regulatory or Disciplinary Events (Proposed Rule 3110.19(b)(9))*

Proposed Rule 3110.19(b)(9) would provide that a location would be ineligible as an RSL where one or more associated persons at such location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board. NASAA highlights that state regulators investigate and bring actions for violations of state securities laws, and proposed Rule 3110.19(b)(9) should reflect that within its scope. To account for state regulators, NASAA recommends including a reference to "any state law pertaining to the regulation of securities" within the list of provisions.

FINRA declines to broaden the scope of proposed Rule 3110.19(b)(9) in the manner NASAA suggests because the list of provisions is derived from Form U4 (Uniform Application for Securities Industry Registration or Transfer), which contains no such language.<sup>29</sup> The provisions were added to Form U4 in 2009 as part of several amendments to the uniform form for which NASAA had expressed its support.<sup>30</sup> To adjust the language

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<sup>29</sup> See, e.g., Form U4, Question 14E(5)–(7) (referencing the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, and the rules of the Municipal Securities Rulemaking Board).

<sup>30</sup> See Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (Order Approving File No. SR-FINRA-2009-008) (noting, among

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as NASAA recommends would create regulatory inconsistency and raise the difficulty of administering and supervising this element.

#### Other Comments

NASAA raises concerns with the “rushed manner” in which the Proposal has been presented and contends that by not going through its regulatory notice process, FINRA has “precluded the ability of all stakeholders to engage in reasoned and thoughtful consideration of the [Proposal].” FINRA disagrees with this assertion. Since the onset of the pandemic, FINRA has been fully engaged with a host of stakeholders about pandemic-related regulatory and operational issues.<sup>31</sup> As part of that ongoing engagement and in response to the pandemic, FINRA adopted several temporary amendments to Rule 3110, including Rule 3110.17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022).<sup>32</sup> As described in the Proposal, the changes brought forth by the pandemic merit a reevaluation of the regulatory benefit of requiring firms to designate a private residence where lower risk activities are conducted as an OSJ or branch office.<sup>33</sup>

Several commenters share views in areas that are outside the scope of the Proposal.<sup>34</sup> These areas include privacy concerns associated with displaying the street address of residential locations on FINRA’s BrokerCheck® tool,<sup>35</sup> and a potential reevaluation of the definitions of OSJ and branch office under Rule 3110(f),<sup>36</sup> and the

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other things, that these provisions enable FINRA and other self-regulatory organizations and state regulators to readily identify persons subject to statutory disqualification as a result of willful violations).

<sup>31</sup> See, e.g., Regulatory Notices 21-44 (December 2021) 20-42 (December 2020) (FINRA Seeks Comment on Lessons From the COVID-19 Pandemic); 20-16 (May 2020); and 20-08 (March 2020) (“Notice 20-08”).

<sup>32</sup> See Proposal, 87 FR 47248, 47249 n.5.

<sup>33</sup> See Proposal, 87 FR 47248, 47249.

<sup>34</sup> See ASA, Canaccord, CFN, Fidelity, FSI, HIC, Integrated Solutions, LPL, MMLIS, NASAA, PIABA, Raymond James, Schwab, SIFMA, Virtu, WFC.

<sup>35</sup> See BrokerCheck, <http://www.brokercheck.finra.org>.

<sup>36</sup> For example, with respect to branch office registration requirements, Fidelity conveys its support for a retrospective rule review, and Canaccord requests clarification that Rule 3110(f)(1)(B) is intended to require registration for capital raising activities, and not merger and acquisition advisory activities. Canaccord also appears to seek relief in principal registration requirements for traders who



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inspection requirement under Rule 3110(c).<sup>37</sup> These commenters also take the opportunity to respond to the Pilot Proposal. While FINRA appreciates the comments raised in these areas, FINRA will consider these comments as part of future rulemaking or as part of the Pilot Proposal, as appropriate. In addition, as FINRA gains experience under the Proposal and as firms' business practices develop, FINRA will review the requirements to ensure that they continue to meet their regulatory objectives.

### SEC Action

Several commenters urge the SEC to adopt this Proposal and the Pilot Proposal concurrently,<sup>38</sup> with some encouraging the SEC to adopt both proposals to coincide with the upcoming expiration of Rule 3110.17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022) on December 31, 2022.<sup>39</sup> Should the SEC need additional time to consider the proposals, some commenters suggest extending Rule 3110.17 until both proposals become effective.<sup>40</sup> Raymond James requests that the relief provided in Notice 20-08 remain in effect until the SEC reaches a decision on the Proposal.

On the other hand, NASAA suggests the SEC disapprove the Proposal and the Pilot Proposal, and instead extend Rule 3110.17 for one year so that FINRA may: "(1) conduct an examination sweep (under the SEC's supervision) to determine the ubiquity and effectiveness of remote supervision policies, procedures, practices and technologies across

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may work from a residential location. To the extent a particular scenario raises questions regarding the application of Rule 3110(f) and attendant registration requirements of associated persons, FINRA expects to address such issues with members through its interpretative process on a case-by-case basis or through future rulemaking, as appropriate.

<sup>37</sup> For example, some commenters believe that certain factors or attributes of an office or location should drive the inspection requirement such as whether, among other things, an office or location is held out to the public; accepts or holds customer securities or funds; maintains physical records; is a location at which permissively registered persons work (e.g., clerical staff or personnel working in compliance, legal, human resources). These commenters believe that the presence of such attributes negate the need for an office or location to undergo an inspection because they do not present a material risk of misconduct or investor harm.

<sup>38</sup> See ASA, Cetera, CFN, Fidelity, Group of 16, MMLIS, Raymond James, Schwab, SIFMA.

<sup>39</sup> See Group of 16, MMLIS, Schwab, SIFMA.

<sup>40</sup> See Fidelity, MMLIS, SIFMA.

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a wide sample of FINRA member firms; (2) issue a public report that describes FINRA’s methods, findings and any recommendations for changes and improvements that could ensure effective remote supervision generally; and (3) based on the record developed, engage in full rulemaking processes for any subsequent proposals, which would include FINRA regulatory notice and comment periods followed by SEC notice and comment periods.”

FINRA appreciates the need for regulatory clarity and has submitted a rule filing with the SEC to amend Rule 3110.17 to extend the temporary relief to conduct remote inspections through the earlier of the effective date of the Pilot Proposal, if approved, or December 31, 2023.<sup>41</sup>

\* \* \* \* \*

FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing and has determined not to amend the Proposal in response to comments. If you have any questions, please contact me at (202) 728-6903, email: [kosha.dalal@finra.org](mailto:kosha.dalal@finra.org).

Best regards,

/s/ Kosha Dalal

Kosha Dalal  
Vice President and Associate General Counsel  
Office of General Counsel

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<sup>41</sup> See File No. SR-FINRA-2022-030, <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-030>.

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**Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2022-019**

1. Barbara Armeli, Managing Director, Chief Compliance Officer, Charles Schwab & Co., Inc. & Lynn Konop, Managing Director, Chief Compliance Officer, TD Ameritrade, Inc. (together, “Schwab”) (August 23, 2022);
2. Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers (“CAI”) (August 23, 2022);
3. Suzy Auletta, SVP and Chief Compliance Officer, Raymond James Financial Services, Inc., & Shawn Barko, SVP, Chief Compliance Officer, Raymond James & Associates, Inc. (“Raymond James”) (August 23, 2022);
4. Casey Bell, Johanna Mears, & Serina Shores, Compliance Team, Huntington Investment Company (“HIC”) (September 2, 2022);
5. David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute (“FSI”) (August 23, 2022);
6. Jennifer A. Brunner, Chief Compliance Officer, Nanette K. Chern, Chief Compliance Officer, Susan L. La Fond, Chief Compliance Officer, & Susan K. Moscaritolo, Chief Compliance Officer, ACA Foreside (“ACA Foreside”) (August 22, 2022);
7. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (August 23, 2022);
8. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, SIFMA (October 19, 2022);
9. Peggy E. Chait, Managing Director & Howard Spindel, Senior Managing Director, Integrated Solutions (“Integrated Solutions”) (August 19, 2022);
10. Justin Dirico, Principal and Head of Futures, OTC Direct Futures LLC (“Dirico”) (August 9, 2022);
11. Michael S. Edmiston, Public Investors Advocate Bar Association (“PIABA”) (August 23, 2022);
12. Christopher A. Iacovella, Chief Executive Officer, American Securities Association (“ASA”) (September 6, 2022);

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13. Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc. (“NASAA”) (August 23, 2022);
14. Gavin Lucca, Manager, Branch Audit, Commonwealth Financial Network (“CFN”) (August 23, 2022);
15. Jim McHale, Executive Vice President, Head of WIM Compliance & Robert Mulligan, Executive Vice President, Global Head of CIB Compliance, Wells Fargo & Company (“WFC”) (August 23, 2022);
16. Gail Merken, Chief Compliance Officer, Fidelity Brokerage Services LLC, Janet Dyer, Chief Compliance Officer, National Financial Services LLC, & John McGinty, Chief Compliance Officer, Fidelity Distributor Company LLC (together, “Fidelity”) (August 23, 2022);
17. Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (“Virtu”) (August 23, 2022);
18. Seth A. Miller, General Counsel, Chief Risk Officer, Cambridge Investment Research, Inc. (“Cambridge”) (August 23, 2022);
19. Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group (“Cetera”) (August 23, 2022);
20. Tamara K. Salmon, Associate General Counsel, Investment Company Institute (“ICI”) (July 29, 2022);
21. Mark Seffinger, Chief Compliance Officer, LPL Financial (“LPL”) (August 23, 2022);
22. Mark Seffinger, Chief Compliance Officer, LPL (October 25, 2022);
23. Karol Sierra-Yanez, Lead Counsel, Broker-Dealer and Investor Advisor Practice Group, MML Investors Services, LLC (“MMLIS”) (August 23, 2022);
24. Harmony Smith, Financial Advisor (“Smith”) (August 8, 2022);
25. Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (“Group of 16”) (October 25, 2022); and
26. Andrew F. Viles, Chief Legal Officer, Canaccord Genuity LLC (“Canaccord”) (August 25, 2022).



**Sarah Kwak**  
Associate General Counsel  
Office of General Counsel

Direct: (202) 728-8471  
Fax: (202) 728-8264

December 9, 2022

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2022-019 – Proposed Rule Change to Adopt  
Supplementary Material .19 (Residential Supervisory Location) under FINRA  
Rule 3110 (Supervision)**

Dear Ms. Countryman:

The Financial Industry Regulatory Authority (“FINRA”) submits this letter in response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing (the “Proposal”) to amend Rule 3110 to add new Supplementary Material .19 (Residential Supervisory Location) (“RSL”). The Proposal would align FINRA’s definition of an office of supervisory jurisdiction (“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 specified safeguards and limitations.

The Commission published the Proposal for public comment in the Federal Register on August 2, 2022,<sup>1</sup> and received 26 unique comment letters in response to the Proposal.<sup>2</sup> On September 14, 2022, FINRA consented to an extension of the time period for SEC action on the Proposal to October 31, 2022.<sup>3</sup> On October 31, 2022, FINRA submitted a

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<sup>1</sup> See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019).

<sup>2</sup> See Attachment A for the list of commenters.

<sup>3</sup> See Letter from Sarah Kwak, Associate General Counsel, FINRA, to Daniel Fisher, Division of Trading and Markets, SEC, dated September 14, 2022.

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response to the comments.<sup>4</sup> FINRA did not propose to change the terms of the Proposal in response to those comments.

The Commission published a notice and order to solicit comments and to institute proceedings to determine whether to approve or disapprove the Proposal.<sup>5</sup> The Commission received five additional comment letters directed towards the Proposal in response to the Order Instituting Proceedings.<sup>6</sup> CAI and FSI, which previously submitted supportive comment letters addressing the Proposal,<sup>7</sup> reaffirm their overall support. PIABA, which also previously submitted a comment letter in opposition to the Proposal,<sup>8</sup> reaffirms its position, expressing the continuing belief that the Proposal runs counter to investor protection. PIABA's concerns are not materially different from those raised in its prior comment letter, and thus FINRA refers to its response in the Response to Comments.<sup>9</sup>

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<sup>4</sup> See Letter from Kosha Dalal, Vice President and Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated October 31, 2022 (“Response to Comments”).

<sup>5</sup> See Securities Exchange Act Release No. 96191 (October 31, 2022), 87 FR 66767 (November 4, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019) (“Order Instituting Proceedings”).

<sup>6</sup> See Letter from Sandip Khosla, General Counsel, Two Sigma Securities, LLC, to Vanessa A. Countryman, Secretary, SEC, dated October 31, 2022 (“TSS”); Letter from Hugh D. Berkson, President, Public Investors Advocate Bar Association, to Vanessa Countryman, SEC, dated November 22, 2022 (“PIABA”); Letter from Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers, to Secretary, SEC, dated November 23, 2022 (“CAI”); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Secretary, SEC, dated November 23, 2022 (“FSI”); and Letter from Andrew Hartnett, President, North American Securities Administrators Association, Inc., to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022 (“NASAA”).

<sup>7</sup> See generally Letter from Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers, to Secretary, SEC, dated August 23, 2022; and Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Secretary, SEC, dated August 23, 2022.

<sup>8</sup> See generally Letter from Michael S. Edmiston, Public Investors Advocate Bar Association, to Vanessa Countryman, SEC, dated August 23, 2022.

<sup>9</sup> See Response to Comments, pp. 2–5.

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The concerns raised by the remaining two commenters—NASAA and TSS—are briefly described below.

#### Breadth of RSL Activities; Exemption from Inspection Requirement

TSS requests clarification on whether the Proposal would deem as a non-branch location a private residence at which the associated person engages in order execution or market making (Rule 3110(f)(1)(A)). In addition, TSS recommends exempting the homes at which associated persons engage in electronic trading from the Rule 3110(c) inspection requirement due to the nature of electronic trading and the ability of electronic trading firms to electronically supervise the activities of their associated persons. With respect to the former, FINRA clarifies that a private residence at which an associated person engages in the functions described under Rule 3110(f)(1)(A) would be deemed an OSJ, not a non-branch RSL under the terms described in the Proposal.<sup>10</sup> With respect to TSS's view on creating an exemption from the inspection requirement, that comment is beyond the scope of the Proposal. However, FINRA will consider comments to revise the inspection requirements more generally as part of any future initiatives to consider the OSJ and branch office definitions more broadly.<sup>11</sup>

#### Safeguards and Conditions

The proposed safeguards and conditions for RSL designation would include, among others, that the firm maintains a list of residence locations (proposed Rule 3110.19(a)(9)), and all books or records the firm is required to make and preserve under the federal securities laws or FINRA rules are maintained by the firm other than at the location (proposed Rule 3110.19(a)(10)).

NASAA expresses concern about the ability of regulators “to know whether and where firms have established RSLs[.]” and questions the reliability or completeness of the proposed requirement for firms to maintain a list of RSLs. As stated in the Response to Comments, FINRA expects firms to maintain the list of RSLs in a manner consistent with the existing documentation requirement under Rule 3110(f)(2)(A)(ii).<sup>12</sup> In addition, NASAA suggests that where a regulator requests this list from a firm rather than obtain it

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<sup>10</sup> FINRA notes that other commenters raised similar views about expanding the breadth of RSL activities to include order execution or market making, among other activities electronic in nature. See Response to Comments, pp. 5–6.

<sup>11</sup> See Securities Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021).

<sup>12</sup> See Response to Comments, p. 8.

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through available information in CRD,<sup>13</sup> such regulator's ability to conduct unannounced examinations may be impeded. FINRA notes that CRD currently provides regulators with information regarding the offices and locations (registered and unregistered) to which associated persons required to be registered are assigned, and FINRA is not proposing to modify this information as part of this Proposal. With respect to the proposed condition pertaining to books and records, NASAA repeats its concerns that the phrase "other than at the location" is too broad and recommends a change to the proposed rule text similar to the change it previously recommended in NASAA's first comment letter.<sup>14</sup> FINRA continues to believe that the language in Rule 3110.19(a)(10), as proposed, is an effective control intended to preclude a firm from maintaining the required books and records at an RSL.

### Ineligibility Criteria

The Proposal would set forth several categories that would preclude a private residence from being designated as an RSL. These categories would include a location where an associated person at the location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or a state regulatory agency (proposed Rule 3110.19(b)(6)), and where an associated person has a record of specified regulatory or disciplinary events (proposed Rule 3110.19(b)(9)).

With respect to proposed Rule 3110.19(b)(6) pertaining to a mandatory heightened supervisory plan due to regulatory action, NASAA states that the proposed criterion could allow a firm to "skirt this condition by imposing its own heightened supervisory plan in lieu of having a plan imposed by order or agreement of a regulator." NASAA recommends that a location should also be precluded from being designated as an RSL where a firm has implemented its own heightened supervisory plan, suggesting that this additional layer of supervision upon an associated person warrants an automatic exclusion of such person's private residence as an RSL. FINRA emphasizes that a firm should routinely evaluate its supervisory system to ensure it is appropriately tailored to the firm's business.<sup>15</sup> Such an evaluation may prompt a firm, out of an abundance of caution and independent of specific regulatory requirements or mandates, to undertake additional supervisory measures, including voluntarily imposing a heightened supervisory plan. FINRA believes that to

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<sup>13</sup> The Central Registration Depository ("CRD<sup>®</sup>") is the central licensing and registration system operated by FINRA for the benefit of FINRA, the SEC, other self-regulatory organizations, and state securities regulators.

<sup>14</sup> See generally Letter from Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated August 23, 2022.

<sup>15</sup> See generally Notice to Members 99-45 (June 1999).



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broaden the heightened supervisory category of ineligibility as NASAA suggests could disincentivize a firm from imposing its own heightened supervisory plan as part of effective supervision if the result was RSL ineligibility.

Another criterion that would deem a private residence ineligible for RSL designation is set forth in Rule 3110.19(b)(9), pertaining to where an associated person has a record of specified regulatory or disciplinary events. NASAA renews its recommendations to adjust the language in proposed Rule 3110.19(b)(9) to include a reference to “any state law pertaining to the regulation of securities” within the list of provisions. FINRA declines to adjust the language as NASAA recommends for the reasons stated in the Response to Comments<sup>16</sup> as the list of provisions aligns with Form U4 (Uniform Application for Securities Industry Registration or Transfer), specifically, the questions pertaining to Regulatory Action Disclosure.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing and has determined not to amend the Proposal in response to comments. If you have any questions, please contact me at (202) 728-8471, email: [sarah.kwak@finra.org](mailto:sarah.kwak@finra.org).

Best regards,

/s/ Sarah Kwak

Sarah Kwak  
Associate General Counsel  
Office of General Counsel

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<sup>16</sup> See Response to Comments, pp. 12–13.

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**Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2022-019**

1. Barbara Armeli, Managing Director, Chief Compliance Officer, Charles Schwab & Co., Inc. & Lynn Konop, Managing Director, Chief Compliance Officer, TD Ameritrade, Inc. (August 23, 2022);
2. Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers (August 23, 2022);
3. Suzy Auletta, SVP and Chief Compliance Officer, Raymond James Financial Services, Inc., & Shawn Barko, SVP, Chief Compliance Officer, Raymond James & Associates, Inc. (August 23, 2022);
4. Casey Bell, Johanna Mears, & Serina Shores, Compliance Team, Huntington Investment Company (September 2, 2022);
5. David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute (August 23, 2022);
6. Jennifer A. Brunner, Chief Compliance Officer, Nanette K. Chern, Chief Compliance Officer, Susan L. La Fond, Chief Compliance Officer, & Susan K. Moscaritolo, Chief Compliance Officer, ACA Foreside (August 22, 2022);
7. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (August 23, 2022);
8. Bernard V. Canepa, Managing Director and Associate General Counsel & Kevin Zambrowicz, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (October 19, 2022);
9. Peggy E. Chait, Managing Director & Howard Spindel, Senior Managing Director, Integrated Solutions (August 19, 2022);
10. Justin Dirico, Principal and Head of Futures, OTC Direct Futures LLC (August 9, 2022);
11. Michael S. Edmiston, Public Investors Advocate Bar Association (August 23, 2022);
12. Christopher A. Iacovella, Chief Executive Officer, American Securities Association (September 6, 2022);
13. Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc. (August 23, 2022);

Ms. Vanessa Countryman  
December 9, 2022  
Page 7 of 7

14. Gavin Lucca, Manager, Branch Audit, Commonwealth Financial Network (August 23, 2022);
15. Jim McHale, Executive Vice President, Head of WIM Compliance & Robert Mulligan, Executive Vice President, Global Head of CIB Compliance, Wells Fargo & Company (August 23, 2022);
16. Gail Merken, Chief Compliance Officer, Fidelity Brokerage Services LLC, Janet Dyer, Chief Compliance Officer, National Financial Services LLC, & John McGinty, Chief Compliance Officer, Fidelity Distributor Company LLC (August 23, 2022);
17. Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (August 23, 2022);
18. Seth Miller, General Counsel, Chief Risk Officer, Cambridge Investment Research, Inc. (August 23, 2022);
19. Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group (August 23, 2022);
20. Tamara K. Salmon, Associate General Counsel, Investment Company Institute (July 29, 2022);
21. Mark Seffinger, Chief Compliance Officer, LPL Financial (August 23, 2022);
22. Mark Seffinger, Chief Compliance Officer, LPL Financial (October 25, 2022);
23. Karol Sierra-Yanez, Lead Counsel, Broker-Dealer and Investor Advisor Practice Group, MML Investors Services, LLC (August 23, 2022);
24. Harmony Smith, Financial Advisor (August 8, 2022);
25. Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (October 25, 2022); and
26. Andrew F. Viles, Chief Legal Officer, Canaccord Genuity LLC (August 25, 2022).

**Exhibit 2d**

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * <input type="text" value="2"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR <input type="text" value="2022"/> - * <input type="text" value="019"/>	Amendment No. (req. for Amendments *) <input type="text"/>
Filing by <b>Financial Industry Regulatory Authority</b>			
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934			
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input checked="" type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>
<b>Caution: You are withdrawing this filing</b>			Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule
			<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
<b>Description</b>			
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).			
Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)			
<b>Contact Information</b>			
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.			
First Name *	<input type="text" value="Sarah"/>	Last Name *	<input type="text" value="Kwak"/>
Title *	<input type="text" value="Associate General Counsel"/>		
E-mail *	<input type="text" value="sarah.kwak@finra.org"/>		
Telephone *	<input type="text" value="(202) 728-8471"/>	Fax	<input type="text"/>
<b>Signature</b>			
Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.			
Date	<input type="text" value="03/29/2023"/>	(Title *)	<input type="text" value="Vice President and Associate General Counsel"/>
By	<input type="text" value="Kosha Dalal"/> <small>(Name *)</small>		
NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		Digitally signed by Kosha Dalal Date: 2023.03.29 10:29:39 -04'00'	

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549					
For complete Form 19b-4 instructions please refer to the EFFF website.					
<div style="background-color: #ffff00; padding: 2px;"><b>Form 19b-4 Information *</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 1 - Notice of Proposed Rule Change *</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 2- Notices, Written Comments, Transcripts, Other Communications</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.</p> <p><input type="checkbox"/> Exhibit Sent As Paper Document</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 3 - Form, Report, or Questionnaire</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.</p> <p><input type="checkbox"/> Exhibit Sent As Paper Document</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 4 - Marked Copies</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Exhibit 5 - Proposed Rule Text</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.</p>	
Add	Remove	View			
<div style="background-color: #ffff00; padding: 2px;"><b>Partial Amendment</b></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="padding: 2px;">Add</td> <td style="padding: 2px;">Remove</td> <td style="padding: 2px;">View</td> </tr> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>	Add	Remove	View	<p>If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.</p>	
Add	Remove	View			

**EXHIBIT 5**

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**3100. SUPERVISORY RESPONSIBILITIES**

**3110. Supervision**

(a) through (f) No Change.

**••• Supplementary Material: -----**

.01 through .17 No Change.

.18 Reserved.

**.19 Residential Supervisory Location**

**(a) Conditions for Designation as a Residential Supervisory Location (RSL).**

Notwithstanding any other provisions of Rule 3110(f) and subject to paragraphs (b), (c) and (d) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, including those described in Rule 3110(f)(1)(D) through (G) or in Rule 3110(f)(2)(B), shall be considered for those activities a non-branch location, provided that:

(1) 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;

(2) the location is not held out to the public as an office;

(3) the associated person does not meet with customers or prospective customers at the location;

(4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii);

(5) neither customer funds nor securities are handled at that location;

(6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule;

(8) the associated person's electronic communications (e.g., e-mail) are made through the member's electronic system;

(9)(A) the member must have a recordkeeping system to make and keep current, and preserve records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; (B) such records are not physically or electronically maintained and preserved at the office or location; and (C) the member has prompt access to such records; and

(10) the member must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each Residential Supervisory Location, and these tools may include but are not limited to: (A) firm-wide tools such as, electronic recordkeeping system; electronic surveillance of e-mail and correspondence; electronic trade blotters; regular activity-based sampling reviews; and tools for visual inspections; (B) tools specific to the RSL

based on the activities of associated person assigned to the location, products offered, restrictions on the activity of the RSL; and (C) system tools such as secure network connections and effective cybersecurity protocols.

**(b) Member Firm Ineligibility Criteria.** A member shall not be eligible to designate an office or location as an RSL in accordance with Rule 3110.19 if the member:

(1) is currently designated as a Restricted Firm under Rule 4111;

(2) is currently designated as a Taping Firm under Rule 3170;

(3) is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location;

(4) receives a notice from FINRA pursuant to Rule 9557 (Procedures for Regulating Activities under Rule 4110 (Capital Compliance), Rule 4120

(Regulatory Notification and Business Curtailment) or Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational

Difficulties)), unless FINRA has otherwise permitted activities in writing pursuant to such rule;

(5) is or becomes suspended by FINRA;

(6) based on the date in the Central Registration Depository (CRD), had its FINRA membership become effective within the prior 12 months; or

(7) is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c).



**(c) Location Ineligibility Criteria.** A location shall not be eligible for designation as an RSL in accordance with Rule 3110.19 if one or more associated persons at such location:

(1) is a designated supervisor who has less than one year of direct supervisory experience with the member;

(2) is functioning as a principal for a limited period in accordance with Rule 1210.04;

(3) is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency;

(4) is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (c)(3) of this Supplementary Material or otherwise as a condition to approval or permission for such association;

(5) has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; or

(6) is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their

supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the MSRB or FINRA.

**(d) Obligation to Provide List of RSLs to FINRA.** A member that elects to designate any office or location of the member as an RSL pursuant to this Supplementary Material shall provide FINRA with a current list of all locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format (e.g., through an electronic process or such other process) as FINRA may prescribe.

\* \* \* \* \*