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Page 1 of * 19

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

File No. * SR 2023 - * 006

Amendment No. (req. for Amendments *) 1

Filing by Financial Industry Regulatory Authority

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

Initial * <input type="checkbox"/>	Amendment * <input checked="" 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"/>	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 *).

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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/03/2023

(Title *)

By Victoria Crane

Vice President and Associate General Counsel

(Name *)

Victoria Crane
Digitally signed by Victoria Crane
Date: 2023.07.03 09:28:40 -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 astericks.

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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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

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

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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

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

Add Remove View

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.

FINRA-2023-006 Partial A-1.docx
FINRA-2023-006 Partial A-1 Exhibit 4.c
FINRA-2023-006 Partial A-1 Exhibit 5.c

On March 29, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change, SR-FINRA-2023-006, to amend FINRA Rule 3110 (Supervision) to adopt new Supplementary Material .19 (Residential Supervisory Location) 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.¹

The Commission published the Proposal for public comment in the Federal Register on April 6, 2023, and the comment period closed on April 27, 2023.² The Commission received 13 comment letters in response to the Proposal.³ In general, most commenters support the overall intent of the Proposal, with some commenters raising concerns with aspects of the proposed conditions and ineligibility criteria.⁴ Two commenters express concerns with the Proposal, but support aspects of the proposed ineligibility criteria and recommend further changes to the Proposal as further discussed below.⁵

FINRA anticipates submitting by separate letter its response to comments on the proposed rule change. In light of such comments, FINRA is proposing to amend proposed Rule 3110.19 to:

- Adjust the location ineligibility criteria pertaining to an associated person with less than one-year of supervisory experience to also be satisfied by experience at a member firm’s affiliate or subsidiary that is registered as a broker-dealer or investment adviser;
- Clarify the scope of the location ineligibility criteria pertaining to an associated person who is the subject of an investigation or proceeding by a regulator relating to an allegation of a failure to supervise by defining these terms as they are defined in Form U4 (Uniform Application for Securities Industry Registration or Transfer Registration) and address the applicability of the proposed exclusion when an investigation has remained pending for a period of time; and

¹ See Securities Exchange Act Release No. 97237 (March 31, 2023), 88 FR 20568 (April 6, 2023) (Notice of Filing of File No. SR-FINRA-2023-006) (“Proposal”).

² See note 1, supra.

³ See Attachment A for the list of commenters.

⁴ See ASA, Cetera, Citigroup, the Committee, FSI, LPL and SIFMA.

⁵ See PIABA and NASAA.

- Require a firm to conduct and document a risk assessment for each office or location before designating such office or location as a Residential Supervisory Location (or “RSL”), including a non-exhaustive list of factors to consider as part of that risk assessment.

With this Partial Amendment No. 1, FINRA is including Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, marked to show the changes to the text as proposed in the Proposal, and Exhibit 5, which reflects all proposed changes to the current rule text, as amended by this Partial Amendment No. 1.

Location Ineligibility Criteria (Proposed Rule 3110.19(c))

The Proposal would set forth several location-level criteria that would preclude a private residence from being designated as an RSL. These ineligibility criteria would include, among others, an associated person at the office or location: (1) who has less than one year of direct supervisory experience with the member firm; (2) is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or a state regulatory agency; and (3) is alleged to have failed to reasonably supervise another person subject to their supervision. Ten commenters share their views on these proposed exclusions.⁶

- *One-Year Supervisory Experience with the Member (Proposed Rule 3110.19(c)(1))*

In the Proposal, proposed Rule 3110.19(c)(1) would provide that an office or location would be ineligible as an RSL where one or more associated persons at such office or location designated as a supervisor has less than one year of direct supervisory experience with the member. This proposed exclusion is intended to address the concern that an associated person does not have the requisite tenure at the member firm to develop experience with firm’s systems, people, products, and overall compliance culture.

In consideration of the comments about the potential adverse impacts such condition could have on hiring efforts, including the transfer of supervisory experience from one broker-dealer to another,⁷ FINRA is proposing to amend proposed Rule 3110.19(c)(1) to permit the one-year supervisory experience minimum to be satisfied by also counting supervisory experience accrued at an affiliate or subsidiary of the member firm that is registered as a broker-dealer or investment adviser. Thus, an associated person with six months of supervisory experience at a member firm’s affiliate or subsidiary that is registered as a broker-dealer or investment adviser, who then

⁶ See ASA, Cetera, Citigroup, the Committee, Davenport, FSI, LPL, NASAA, PIABA and SIFMA.

⁷ See ASA, Cetera, the Committee, FSI, LPL and SIFMA.

subsequently becomes associated with the member firm in a supervisory capacity, would be able to carry forward the accrued supervisory experience to the member firm for purposes of having their location considered as an eligible RSL, subject to the other specified terms of proposed Rule 3110.19. FINRA believes that the proposed adjustment would reflect a more balanced approach to addressing the concern about an associated person's minimum level of experience as a supervisor with a particular member by recognizing that such entities may share systems and have similar compliance cultures to meet their obligations under federal securities laws.

- *Heightened Supervisory Plan (Proposed Rule 3110.19(c)(3))*

Proposed Rule 3110.19(c)(3) would provide that a location would be ineligible as an RSL where 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. One commenter recommended expanding this proposed provision to include heightened supervisory plans imposed by the member, stating that it is concerned "that some firms may impose their own heightened supervisory plan in lieu of a formal regulatory action or order, or in response to a regulatory examination. Such circumstances raise the same concerns as regulator-mandated plans and should be addressed accordingly."⁸

As FINRA has previously stated, "a firm should routinely evaluate its supervisory system to ensure it is appropriately tailored to the firm's business (citation omitted). 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."⁹ FINRA declines to expand the ineligibility criteria to include such voluntary heightened supervisory plans because FINRA believes what constitutes a voluntary heightened supervisory plan is subjective and, moreover, could act to disincentivize firms from imposing tailored or more specific supervisory controls if the result was RSL ineligibility. However, to strike an appropriate balance between a firm's decision to impose its own heightened supervisory plan and the concern raised by a commenter,¹⁰ FINRA is proposing to account for nonmandatory heightened supervision under proposed new paragraph (e) (Risk Assessment) to proposed Rule 3110.19, as an express risk factor to be considered as described further below.

- *Allegation of Failure to Supervise (Proposed Rule 3110.19(c)(6))*

Proposed Rule 3110.19(c)(6) would provide that a location would be ineligible for designation as an RSL where one or more associated persons at such location is currently

⁸ See NASAA.

⁹ See Proposal, Exhibit 2c.

¹⁰ See NASAA.

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 specified provisions, including any state law pertaining to the regulation of securities or any of the rules of FINRA. Three commenters support this proposed exclusion.¹¹ While supportive, one commenter believes that the proposed exclusion should be expanded to account for associated persons who have been the subject of multiple customer complaints, consumer-initiated, investment-related arbitrations or civil litigation.¹² In response to this comment, FINRA is proposing to account for customer complaints under the newly proposed requirement under Rule 3110.19(e) that would require firms to conduct and document a risk assessment and expressly includes consideration of customer complaints, taking into account the volume and nature of the complaints.

Four commenters, however, express concerns with the proposed exclusion.¹³ In sum, they contend that the proposed provision is overly broad and vague. They assert that: allegations against an associated person are commonly inaccurate or lacking in detail to be sufficient to assess the associated person's culpability or involvement; allegations raise issues of basic fairness because an office or location could lose its RSL designation by one state's allegation without any substantive finding or adjudication;¹⁴ it is difficult to know when a state investigation officially opens and when it closes, which may take years to officially close;¹⁵ and as a practical matter, firms would encounter challenges in tracking this proposed exclusion because of the lack of uniformity among standards at the state level for opening an investigation, and more generally, Form U4 does not expressly require disclosure of state investigations alleging a failure to supervise.¹⁶

In consideration of the comments, FINRA is proposing to amend proposed Rule 3110.19(c)(6) to clarify the scope of applicable regulatory investigations and proceedings by defining the terms as those terms are defined in Form U4, adding the word "expressly" to reduce ambiguity regarding the nature of the allegations, and specifying the applicability of the proposed exclusion when an Investigation (as such term would be defined) has been pending for a period of time. As amended, proposed Rule

¹¹ See Davenport, NASAA and PIABA.

¹² See PIABA.

¹³ See ASA, Cetera, Citigroup and SIFMA.

¹⁴ See Cetera and SIFMA.

¹⁵ See ASA, Cetera and SIFMA.

¹⁶ See ASA, Citigroup and SIFMA.

3110.19(c)(6) would provide that an office or location would be ineligible for RSL designation if one or more associated persons at such office or location has been notified in writing that such person is now subject to any Investigation¹⁷ or Proceeding,¹⁸ as such terms are defined in Form U4's Explanation of Terms, by the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) (each, a "Regulator") expressly alleging that they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of the specified provisions. In addition, as amended, proposed Rule 3110.19(c)(6) would include a temporal element to provide that such office or location may be designated or redesignated as an RSL, subject to the requirements of proposed Rule 3110.19, upon the earlier of: (1) the member's receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (2) one year from the date of the last communication from such Regulator relating to such Investigation. FINRA believes using the definitions from Form U4 provides consistency and clarity not only with respect to the scope of applicable events subject to the ineligibility criteria, but also regarding when some events "begin" (e.g., after the "Wells" notice has been given).¹⁹ In addition, FINRA notes that the component of the proposed provisions—"expressly" alleging they have failed to reasonably supervise another person subject to their supervision"—would be satisfied

¹⁷ Form U4 Explanation of Terms defines "Investigation" as including: "(a) grand jury investigations; (b) U.S. Securities and Exchange Commission investigations after the "Wells" notice has been given; (c) FINRA. [sic] investigations after the "Wells" notice has been given or after a person associated with a member, as defined by The FINRA By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action; (d) NYSE Regulation investigations after the "Wells" notice has been given or after a person over whom NYSE Regulation has jurisdiction, as defined in the applicable rules, has been advised by NYSE Regulation that it intends to recommend formal disciplinary action; (e) formal investigations by other SROs; or (f) actions or procedures designated as investigations by jurisdictions. The term investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations."

¹⁸ Form U4 Explanation of Terms defines "Proceeding" as: "A formal administrative or civil action initiated by a governmental agency, self-regulatory organization or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge), or a misdemeanor criminal information (or equivalent formal charge), but does not include an arrest or similar charge effected in the absence of a formal criminal indictment or information (or equivalent formal charge). NOTE: Investment-related civil litigation, other than that specified above, is reportable under Question 14H on Form U4. An investigation is reportable under Question 14G on Form U4."

¹⁹ See note 18, supra.

where a Regulator's written notification to an associated person describes circumstances and other allegations that could be reasonably construed to relate to a failure to reasonably supervise another individual under the associated person's supervision.

Risk Assessment (Proposed Rule 3110.19(e))

As referenced above, in light of the comments, FINRA is proposing to add a requirement for a member firm to conduct and document a risk assessment prior to designating an office or location as an RSL in accordance with the requirements of proposed Rule 3110.19. The proposed risk assessment would set forth a non-exhaustive list of factors a firm must consider and document before such RSL designation, including customer complaints and heightened supervision.

Under proposed new Rule 3110.19(e), prior to designating an office or location as an RSL, a member must develop a reasonable risk-based approach to designating an office or location as an RSL and conduct and document a risk assessment for the associated person assigned to that office or location. In addition, the assessment must document the factors considered, including among others, whether the associated person at such office or location is now subject to: (1) customer complaints, taking into account the volume and nature of the customer complaints; (2) heightened supervision other than where such office or location is ineligible for RSL designation under proposed Rule 3110.19(c)(3); (3) any failure to comply with the member's written supervisory procedures; (4) any recordkeeping violation; and (5) any regulatory communications from a Regulator, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision. Proposed Rule 3110.19(e) would require a member to take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Further, consistent with its obligation under Rule 3110(a) (Supervisory System), the member's supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., "red flags") when designating an office or location as an RSL. In addition, proposed Rule 3110.19(e) would provide that red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of proposed Rule 3110.19 and the member should consider evidencing steps taken to address those red flags where appropriate.

FINRA believes that the proposed risk assessment and accompanying documentation requirement would strengthen supervisory controls to further protect investors by requiring firms to consider higher risk criteria in determining whether to designate an office or location as an RSL.

Attachment A: Alphabetical List of Commenters to File No. SR-FINRA-2023-006

1. David T. Bellaire, Financial Services Institute (“FSI”), (April 27, 2023)
2. Hugh Berkson, Public Investors Advocate Bar Association (“PIABA”) (April 26, 2023)
3. Bernard V. Canepa, Securities Industry and Financial Markets Association (“SIFMA”) (April 27, 2023)
4. Andrew Hartnett, North American Securities Administrators Association, Inc. (“NASAA”) (April 27, 2023)
5. Christopher A. Iacovella, American Securities Association (“ASA”) (May 25, 2023)
6. Clifford Kirsch & Eric Arnold, Eversheds Sutherland (US) LLP on behalf of the Committee of Annuity Insurers (the “Committee”) (April 27, 2023)
7. Scott C. Kursman, Citigroup Global Markets, Inc. (“Citigroup”), (April 28, 2023)
8. Theresa J. Manderski, Davenport & Company LLC (“Davenport”) (April 27, 2023)
9. Gail Merken, Janet Dyer & John McGinty, Fidelity Investments, (“Fidelity”) (April 27, 2023)
10. Mark Quinn, Cetera Financial Group (“Cetera”) (April 27, 2023)
11. James Rabenstine & Holly Butson, Nationwide Financial Services, Inc. (“Nationwide”) (April 24, 2023)
12. Mark Segginger, LPL Financial (“LPL”) (May 25, 2023)
13. Karol Sierra-Yanez, MML Investors Services, LLC (“MMLIS”), (April 25, 2023)

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 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) through (b) No Change.

(c) **Location Ineligibility Criteria.** An office or location shall not be eligible for designation as an RSL in accordance with Rule 3110.19 if one or more associated persons at such office or location:

(1) is a designated supervisor who has less than one year of direct supervisory experience with the member, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser;

(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]such associated person is now subject to, any [i]Investigation[,] or [p]Proceeding, [complaint or other action] as such terms are defined in the Explanation of Terms for the Form U4 (Uniform Application for Securities Industry Registration or Transfer Registration), by [the member,] the SEC, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly 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 other self-regulatory organization, including FINRA; provided, however, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the member’s

receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.

(d) No Change.

(e) Risk Assessment. Subject to the requirements of this Supplementary Material, prior to designating an office or location as an RSL, the member must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. The assessment must document the factors considered, including among others, whether the associated person at such office or location is now subject to: (1) customer complaints, taking into account the volume and nature of the complaints; (2) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material; (3) any failure to comply with the member's written supervisory procedures; (4) any recordkeeping violation; and (5) any regulatory communications from a Regulator, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision. The member must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under Rule 3110(a), the member's supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., "red flags") when designating an office or location as an RSL. Red flags should also be reviewed in

determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of this Supplementary Material and the member should consider evidencing steps taken to address those red flags where appropriate.

* * * * *

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. An office or location shall not be eligible for designation as an RSL in accordance with Rule 3110.19 if one or more associated persons at such office or location:

(1) is a designated supervisor who has less than one year of direct supervisory experience with the member, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser;

(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) has been notified in writing that such associated person is now subject to, any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4 (Uniform Application for Securities Industry Registration or Transfer Registration), by the SEC, a self-regulatory organization,

including FINRA, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly 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 other self-regulatory organization, including FINRA; provided, however, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the member’s receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.

(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.

(e) Risk Assessment. Subject to the requirements of this Supplementary Material, prior to designating an office or location as an RSL, the member must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. The assessment must document the factors considered, including among

others, whether the associated person at such office or location is now subject to: (1) customer complaints, taking into account the volume and nature of the complaints; (2) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material; (3) any failure to comply with the member's written supervisory procedures; (4) any recordkeeping violation; and (5) any regulatory communications from a Regulator, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision. The member must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under Rule 3110(a), the member's supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., "red flags") when designating an office or location as an RSL. Red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of this Supplementary Material and the member should consider evidencing steps taken to address those red flags where appropriate

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