competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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 up to 90 days (i) as the Commission may designate 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 (https://www.sec.gov/rules/sro.shtml); or

• Send an email to rule-comments@sec.gov. Please include file number SR–ICC–2023–009 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–ICC–2023–009. This file number should be included on the subject line if email 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 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit’s website at https://www.theice.com/clear-credit/regulation.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ICC–2023–009 and should be submitted on or before August 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 15

Sherry R. Haywood, Assistant Secretary.

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II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

A. Background

Currently under FINRA rules, a private residence at which certain supervisory functions occur would need to be registered and designated as a branch office or office of supervisory jurisdiction (“OSJ”) under Rule 3110(a)(3) and inspected at least annually under Rule 3110(c)(1)(A). However, as part of its response to the COVID–19 pandemic, FINRA temporarily suspended the requirement for member firms to submit branch office registration applications on Form...
BR (Uniform Branch Office Registration Form) for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic (the “Form BR Temporary Suspension”).9 FINRA stated that absent further regulatory action, once the Form BR Temporary Suspension is lifted, FINRA rules would require member firms to “either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices.”10 Registering a private residence as an OSJ or supervisory branch office would impose a corresponding annual inspection requirement.11 Under the proposed rule change, a new location designation, Residential Supervisory Location (“RSL”), would be treated as a non-branch location, subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.12

B. Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing to adopt new Supplementary Material 19 under Rule 3110 to establish an RSL designation that would treat an eligible location as a non-branch location (i.e., exclude it from branch-office registration and the corresponding annual inspection requirement), subject to specified limitations and conditions, as described below.

1. Conditions for Designation as a Residential Supervisory Location

Under proposed Rule 3110.19(a), an associated person’s private residence where supervisory activities are conducted (i.e., an RSL) shall be considered for those activities a non-branch location (and thus excluded from branch-office registration and the corresponding annual inspection requirement), 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; 13 (2) the location is not held out to the public as an office; 14 (3) the associated person does not meet with customers or prospective customers at the location; 15 (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); 16 (5) neither customer funds nor securities are handled at that location; 17 (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; 18 (7) the associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with Rule 3110; 19 (8) the associated person’s electronic communications (e.g., email) are made through the member’s electronic system; 20 (9) the member has a recordkeeping system to make and keep current, and preserved 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; 21 (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; 22 and (10) the member has determined that its surveillance and technology tools are appropriate to supervise the types of risks presented by each RSL; these tools may include but are not limited to: (A) firm-wide tools such as, an electronic recordkeeping system; electronic surveillance of email 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 the associated person assigned to the location, products offered, and restrictions on the activity of the RSL; and (C) system tools, such as secure network connections and effective cybersecurity protocols.23

2. Member Firm Ineligibility Criteria

Under proposed Rule 3110.19(b), a member firm would be ineligible to designate any of its offices or locations as an RSL if the member: (1) is currently designated as a Restricted Firm under Rule 4111 (Restricted Firm Obligations); 24 (2) is currently designated as a Taping Firm under Rule 3170 (Tape Recording of Registered Persons by Certain Firms); 25 (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; 26 (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; 27 (5) is or becomes suspended by FINRA; 28 (6) based on the date in the Central Registration Depository, had its FINRA membership become effective within the prior twelve months; 29 or (7) is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c).30

3. Location Ineligibility Criteria

As originally proposed, under proposed Rule 3110.19(c), a specific location of an otherwise eligible member would be ineligible for designation as an RSL if one or more associated persons at the location: (1) is a designated supervisor who has less than one year of direct supervisory experience with the member; 31 (2) is functioning as a principal for a limited period in accordance with Rule 1210.04 (Registration Requirements); 32 (3) is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA, or a state regulatory agency; 33 (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 proposed Rule 3110.19(b), or otherwise as a condition to approval or permission for such association; 34 (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 (Uniform Application for Securities Industry Registration or Transfer
of the rules of the MSRB or other self-regulatory organization, including FINRA. Further, Amendment No. 1 would permit such office or location to 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.

4. Obligation To Provide List of RSLs to FINRA

Under proposed Rule 3110.19(d), any member that elects to designate any office or location of the member as an RSL pursuant to proposed Rule 3110.19 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.

5. Risk Assessment

Amendment No. 1 would further modify the proposed rule change by adding proposed Rule 3110.19(e). This proposed rule change would require a member—prior to designating an office or location as an RSL—to develop a reasonable risk-based approach to designating the office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. This proposed rule change would require documentation of the factors considered, including, among others, whether the associated person at such office or location 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 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 (“MSRB”) or FINRA.

Amendment No. 1 also would modify proposed Rule 3110.19(c)(5). As amended, proposed Rule 3110.19(c)(5) 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 associated person is now subject to any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4, 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 of 1933, the Exchange Act, the Investment Advisers Act of 1940, the Commodity Exchange Act of 1940, 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

34 See proposed Rule 3110.19(c)(5), 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. See Notice 20577 n.97.
35 See proposed Rule 3110.19(c)(6).
36 See proposed Rule 3110.19(c)(1); Amendment No. 1.
37 See proposed Rule 3110.19(c)(6); Amendment No. 1.
38 See id.
39 Proposed Rule 3110.19(e); Amendment No. 1.
40 Proposed Rule 3110.19(e).
41 Id.
42 Id.
43 Id.
44 Id.
46 Id.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Proprietary Market Data Fee Schedule

July 5, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on June 30, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to amend the NYSE Arca Options Proprietary Market Data Fee Schedule (“Fee Schedule”)3 to introduce a data product to be known as the NYSE Options Open-Close Intra-Day Volume Summary (“Intra-Day Volume Summary”) that would be available for purchase by any market participant, i.e., members4 and non-members, on an ad-hoc basis and to adopt fees for such product.

The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to introduce a data product to be known as the Intra-Day Volume Summary that would be available for purchase by market participants on an ad-hoc basis and to adopt fees for such product.4

More specifically, the Exchange proposes to offer an ad-hoc historic monthly Intra-Day Volume Summary market data product that provides a volume summary of trading activity on

4 Members of the Exchange are OTP Firms, OTP Holders and ETP Holders.

3 The Exchange previously adopted a subscription-based market data product known as the NYSE Options Open-Close Volume Summary that market participants can purchase on a subscription basis. See Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR–NYSEArca–2021–82). The purpose of this filling is to introduce a historic monthly report of the NYSE Options Open-Close Volume Summary that would be available for purchase by any market participant on an ad-hoc basis.

4 The Exchange previously adopted a subscription-based market data product known as the NYSE Options Open-Close Volume Summary.