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September 14, 2023

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2023-006 – Proposed Rule Change to Adopt  
Supplementary Material .19 (Residential Supervisory Location) under FINRA  
Rule 3110 (Supervision)**

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this letter in response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to a proposal to amend FINRA Rule 3110 to add new Supplementary Material .19 (Residential Supervisory Location) (“Proposal”).<sup>1</sup> 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 April 6, 2023,<sup>2</sup> and received 13 comment letters in response.<sup>3</sup> In consideration of these

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<sup>1</sup> 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) (the “Initial Filing”).

<sup>2</sup> See note 1, *supra*.

<sup>3</sup> See Attachment A for the list of commenters to the Initial Filing.

comments, FINRA filed Partial Amendment No. 1 on July 3, 2023<sup>4</sup> and subsequently submitted a letter responding to the comments on the Initial Filing, including those that led to the Partial Amendment.<sup>5</sup> Through the Partial Amendment, FINRA is proposing 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 those terms as they are defined in Form U4 (Uniform Application for Securities Industry Registration or Transfer) and address the applicability of the proposed exclusion when an investigation has remained pending for a period of time; and
- 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.

On July 11, 2023, the SEC published a notice and order in the Federal Register to solicit comments on the Partial Amendment and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (“SEA”) in the above-referenced rule filing to determine whether to approve or disapprove the Proposal as modified by the Partial Amendment.<sup>6</sup> The SEC received 12 comment letters in response to the Order.<sup>7</sup> Several of the views conveyed in these comment letters are similar to those presented in response to the Initial Filing, including: that the one-year timing requirement of proposed Rule 3110.19(c)(1) is arbitrary and would have an adverse impact on hiring

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<sup>4</sup> See Partial Amendment No. 1 to File No. SR-FINRA-2023-006 filed on July 3, 2023 (“Partial Amendment”), <https://www.finra.org/sites/default/files/2023-07/sr-2023-006-amendment-No1.pdf>. In such Partial Amendment, FINRA noted that it anticipated submitting by separate letter its response to comments on the Proposal.

<sup>5</sup> See Letter from Sarah Kwak, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated July 25, 2023 (“Response to Comments”).

<sup>6</sup> See Securities Exchange Act Release No. 97839 (July 5, 2023), 88 FR 44173 (July 11, 2023) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2023-006) (“Order”).

<sup>7</sup> See Attachment B for the list of commenters in response to the Order.

efforts;<sup>8</sup> that an RSL should be subject to an annual inspection schedule;<sup>9</sup> and questioning the need to inspect locations that bear specified traits (e.g., location is not held out to the public, no physical records are maintained at the location, activities occur through the firm’s electronic systems).<sup>10</sup> FINRA reiterates and incorporates by reference its earlier Response to Comments that addressed concerns from commenters on the Initial Filing that were restated by commenters in response to the Order.<sup>11</sup> The following are FINRA’s responses to the commenters’ material concerns that differ from the concerns FINRA has already addressed in its Response to Comments.

While PIABA continues to voice its objection to the Proposal, other commenters, including NASAA, express their overall support, but with some alternative suggestions to specific terms of the proposed location ineligibility criteria. In light of the comments received related to proposed Rule 3110.19(e)(5), FINRA is contemporaneously submitting Partial Amendment No. 2 to amend that provision to improve readability.<sup>12</sup>

#### Location Ineligibility Criteria (Proposed Rule 3110.19(c))

The Partial Amendment sets forth several location-level criteria that would preclude a private residence where supervisory activities are occurring 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, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser; or (2) who has been notified in writing that such person is now subject to an Investigation or Proceeding (as such terms are defined in Proposal) by a regulator expressly alleging that such person has failed to reasonably supervise another person subject to their supervision. Eight commenters share their views on these proposed

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<sup>8</sup> See Albert and Cetera II.

<sup>9</sup> See NASAA II and PIABA II.

<sup>10</sup> See Virtu.

<sup>11</sup> See note 5, supra.

<sup>12</sup> FINRA is also proposing a technical change to proposed Rule 3110.19(c)(6) to correct the title to Form U4. See Partial Amendment No. 2 to File No. SR-FINRA-2023-006 filed on September 14, 2023 (“Partial Amendment No. 2”), <https://www.finra.org/sites/default/files/2023-09/SR-FINRA-2023-006-Amendment-2.pdf>.

exclusions with PIABA recommending that “multiple customer complaints” should be an ineligibility criterion.<sup>13</sup>

- *One-Year Supervisory Experience with the Member or an Affiliate or Subsidiary of the Member that is a Registered Broker-Dealer or Investment Adviser (Proposed Rule 3110.19(c)(1))*

As amended, 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, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser. As explained in the Partial Amendment, FINRA believes that the proposed adjustment to this criterion to allow supervisory experience at an affiliate or subsidiary of a member that is registered as a broker-dealer or investment adviser to count would reflect a more balanced approach to addressing the concerns about hiring efforts and 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 the federal securities laws. Many commenters are supportive of proposed Rule 3110.19(c)(1), as amended.<sup>14</sup> Cetera continues to question the one-year supervisory experience timeframe but is otherwise supportive of the Proposal overall. WFC encourages a future reassessment of the proposed provision for experienced supervisors that are switching to a new supervisory role at an unaffiliated broker-dealer. While Albert believes that it is sensible for a newly hired principal to learn about the firm’s functions, Albert expresses concerns with the criterion’s impacts on hiring efforts and recommends that proposed Rule 3110.19(c)(1) be further amended to remove the requirement that an associated person have “direct supervisory experience” with the member, or an affiliated or subsidiary of the member that is registered as a broker-dealer or investment adviser. As such, Albert believes the proposed provision should be expanded to permit a new hire to start the one-year timeframe at the new employer by working remotely in a non-supervisory capacity prior to working in a supervisory capacity. PIABA, however, opposes the proposed amendment, believing that such amendment would result in more “supervisory gaps” by allowing an associated person’s experience “supervising at a lax investment [adviser]” to then engage in supervisory functions at an affiliated member firm.

FINRA declines to revise or eliminate the proposed provision as suggested by the commenters. As explained in the Initial Filing, this proposed exclusion is intended to address the concern that an associated person does not have the requisite tenure at the

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<sup>13</sup> See Albert, Cetera II, Fidelity, Group of 13, NASAA II, PIABA II, SIFMA II, and WFC.

<sup>14</sup> See Cetera, Fidelity, Group of 13, NASAA II, SIFMA II, and WFC.

member firm to develop experience with the firm's systems, people, products, and overall compliance culture. FINRA believes the Proposal, as amended, appropriately addresses that concern.

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

In consideration of the comments as described in the Partial Amendment and Response to Comments, proposed Rule 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 Investigation<sup>15</sup> or Proceeding,<sup>16</sup> 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. As FINRA noted in the Partial Amendment, the component of the proposed provision—"expressly alleging they have failed to reasonably supervise another person subject to their supervision"—would be satisfied where a Regulator's written notification to an associated person describes circumstances and other allegations that could be reasonably construed to

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<sup>15</sup> Form U4 Explanation of Terms defines "Investigation" as: "Includes: (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."

<sup>16</sup> 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."

relate to a failure to reasonably supervise another individual under the associated person's supervision. In addition, proposed Rule 3110.19(c)(6), as amended, would include a temporal component to address concerns that unadjudicated allegations would form the basis of a location's permanent exclusion as an RSL.

Several commenters convey their general support for proposed Rule 3110.19(c)(6), as amended.<sup>17</sup> NASAA, however, makes several recommendations to the proposed provision to: codify FINRA's above-referenced description of the "expressly alleging" component; clarify that a "Wells" notice or equivalent procedure would not be a prerequisite for RSL ineligibility; and clarify that subpoenas and certain other regulatory communications can provide "notice of an 'investigation' and can satisfy the 'expressly alleging' threshold depending on the information contained therein." (citation omitted).

FINRA declines to amend proposed Rule 3110.19(c)(6) in the manner NASAA recommends. FINRA believes that the reference to the well-established definitions from Form U4 provide a clear picture of the scope of applicable events subject to the proposed ineligibility criterion. Moreover, while subpoenas and "certain other regulatory communications" are excluded from Form U4's definition of "Investigation," proposed Rule 3110.19(e)(5) would capture "any regulatory communications from a Regulator, including but not limited to, subpoenas[]" as part of a firm's risk assessment.

- *Customer Complaints*

PIABA believes that the proposed ineligibility criteria 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. In response to this comment, and as described in the Partial Amendment, FINRA believes an express exclusion is not appropriate given customer complaints may lack merit, and proposed Rule 3110.19(e) already addresses customer complaints. Under this proposed provision, a firm would be required to conduct and document a risk assessment and consider a list of non-exhaustive factors, including customer complaints, taking into account the volume and nature of the complaints.<sup>18</sup>

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<sup>17</sup> See Fidelity, Group of 13 and NASAA II.

<sup>18</sup> FINRA is proposing to include customer complaints as a risk factor in this Proposal to align with its consideration as a risk factor in other contexts such as in how a firm may establish and maintain a supervisory system that is appropriately tailored to the firm's business and structure, whether unannounced visits to an office or location may be appropriate, or whether heightened supervisory procedures may need to be imposed. See generally Notice to Members 99-45 (June 1999) and Notice to Members 97-19 (April 1997).

List of RSLs (Proposed Rule 3110.19(d))

Under proposed Rule 3110.19(d), a member that elects to designate any office or location of the member as an RSL would be required to 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. The Group of 13 supports the proposed provision but recommends the use of the established branch office registration and designation framework for reporting, with a designation specifically for RSLs. FINRA appreciates this recommendation and is exploring ways for firms to provide this information to FINRA and state regulators in a more efficient and timely manner, including through the use of existing uniform registration forms or FINRA Gateway.

Risk Assessment (Proposed Rule 3110.19(e))

Proposed Rule 3110.19(e) would provide, in part, that 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 complaints (proposed Rule 3110.19(e)(1)); and (2) 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)(5)).

PIABA recommends that additional guidance should be given as to how a firm should weigh the volume and nature of customer complaints as part of the proposed risk assessment. As noted above, FINRA is proposing to include customer complaints as an express risk factor that must be considered in conducting the required risk assessment under proposed Rule 3110.19(e)(1). FINRA expects that a firm will consider customer complaints and weigh their volume and nature based on the firm’s business, products, and customer base among other factors generally considered by the firm when making risk-based assessments in other contexts, such as in how a firm may establish and maintain a supervisory system that is appropriately tailored to the firm’s business and structure, whether unannounced visits to an office or location may be appropriate, or whether heightened supervisory procedures may need to be imposed.<sup>19</sup>

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<sup>19</sup> See generally Notice to Members 99-45 (June 1999) and Notice to Members 97-19 (April 1997).

Fidelity and SIFMA request clarification on part of the language used in proposed Rule 3110.19(e)(5). Specifically, they assert that the position of the phrase, “indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision[.]” appearing at the end of the proposed provision makes it unclear as to whether it is meant to apply to examinations only or to all of the communications listed in the proposed provision. To improve the readability of the proposed provision, FINRA is proposing to rearrange the above-referenced phrase in Rule 3110.19(e)(5) to read as “any regulatory communications from a Regulator, indicating that the associated person at such office or location failed to reasonably supervise another person subject to their supervision, 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.”<sup>20</sup>

#### Other Comments

- *Registration of an Office or Location in a Hybrid Work Model*

SEB poses a question about how often a home office would need to be used to be considered an RSL. Rule 3110(f)(2)(A) defines “branch office” as any location where an associated person of a member “regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any securities, or is held out as such[.]” If an associated person regularly engages in such business from a private residence, then that private residence would be deemed a branch office. FINRA emphasizes that the Proposal is not intended to change this longstanding definition, but to provide another designation for an eligible private residence to be treated as a non-branch location. FINRA notes that the language in Rule 3110(f)(2)(A) is not new and has been a part of the branch office definition since it became effective in 2006.<sup>21</sup> FINRA believes that SEB’s question relates to a broader question about the branch office definition more generally that will be considered as part of any future initiatives to consider the OSJ and branch office definitions.

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<sup>20</sup> See note 12, *supra*. FINRA notes that Fidelity suggests starting the phrase with the word “stating” instead of “indicating.” FINRA emphasizes that the proposed adjustment to Rule 3110.18(e)(5) is technical in nature, and FINRA does not believe any further changes to the language in that proposed provision are necessary.

<sup>21</sup> See Notice to Members 05-67 (October 2005) (announcing FINRA’s adoption of the uniform branch office definition, effective May 1, 2006).



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- *Reconsider the Inspection Requirement*

Virtu questions whether a location that is not held out to the public as a physical office location, at which no physical records are maintained, all activities occur through centralized electronic systems, and for which supervision may be conducted remotely, should be deemed a “branch office.” Virtu suggests that for such locations, there should be no reason to inspect the physical location. FINRA considers this recommendation beyond the scope of the Proposal. As referenced above, 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.

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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) 728-6903, 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

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

1. David T. Bellaire, Financial Services Institute (“FSI”) (April 27, 2023)
2. Hugh Berkson, Public Investors Advocate Bar Association (“PIABA I”) (April 26, 2023)
3. Bernard V. Canepa, Securities Industry and Financial Markets Association (“SIFMA I”) (April 27, 2023)
4. Andrew Hartnett, North American Securities Administrators Association, Inc. (“NASAA I”) (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 “CAI”) (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 I”) (April 27, 2023)
10. Mark Quinn, Cetera Financial Group (“Cetera I”) (April 27, 2023)
11. James Rabenstine & Holly Butson, Nationwide Financial Services, Inc. (“Nationwide”) (April 24, 2023)
12. Mark Seffinger, LPL Financial (“LPL I”) (May 25, 2023)
13. Karol Sierra-Yanez, MML Investors Services, LLC (“MMLIS”) (April 25, 2023)

**Attachment B: Alphabetical List of Commenters to File No. SR-FINRA-2023-006,  
Partial Amendment**

1. Hugh Berkson, Public Investors Advocate Bar Association (“PIABA II”) (July 31, 2023)
2. Bernard V. Canepa, Securities Industry and Financial Markets Association (“SIFMA III”) (August 15, 2023)
3. Bernard V. Canepa, Securities Industry and Financial Markets Association (“SIFMA II”) (August 1, 2023)
4. Compliance Officer, SEB Securities, Inc. (“SEB”) (July 13, 2023)
5. Michael Friedman, Albert Securities, LLC (“Albert”) (July 24, 2023)
6. Andrew Hartnett, North American Securities Administrators Association, Inc. (“NASAA II”) (July 26, 2023)
7. Jim McHale & Peter Macchio, Wells Fargo & Company (“WFC”) (August 1, 2023);
8. Gail Merken, Janet Dyer & John McGinty, Fidelity Investments (“Fidelity II”) (August 1, 2023)
9. Thomas M. Merritt, Virtu Financial, Inc. (“Virtu”) (August 1, 2023);
10. Mark Quinn, Cetera Financial Group (“Cetera II”) (July 31, 2023)
11. Mark Seffinger, LPL Financial (“LPL II”) (August 1, 2023)
12. Jennifer L. Szaro, XML Securities, LLC, et al. (collectively, “Group of 13”) (July 27, 2023)