



**FINANCIAL  
SERVICES  
INSTITUTE**

VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
FIRMS AND INDEPENDENT  
FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

December 1, 2022

Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: SR-FINRA-2022-030: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022) Under FINRA Rule 3110 (Supervision)

Dear Secretary:

On October 31, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections) under FINRA Rule 3110 (Supervision) to include calendar year 2023 inspection obligations through the earlier of the effective date of the pilot program proposed in File No. SR-FINRA-2022-021, if approved, or December 31, 2023. On November 10, 2022, this proposal was published in the Federal Register for public comment.<sup>1</sup> On November 16, 2022, the SEC published an order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision).<sup>2</sup> Given this Order, a determination on the Remote Inspections Pilot Program may not occur before the end of the year. We appreciate FINRA’s approach in seeking an extension of the Temporary Relief to reduce the possibility that operational issues are experienced by our members as the SEC continues to review a proposed rule change to adopt Supplementary Material .18 (Remote Inspections Pilot Program). While we support the Remote Inspections Pilot Program, as outlined in our comment submitted September 6, 2022,<sup>3</sup> for many of the same reasons, we also

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<sup>1</sup> Self-Regulatory Organizations; FINRA, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Years 2020 and 2021, and Through December 31 of Calendar Year 2022) Under FINRA Rule 3110 (Supervision), available at <https://www.finra.org/sites/default/files/2022-11/NOF%20IMM%20EFF%20FINRA-2022-030.pdf>

<sup>2</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision), available at <https://www.federalregister.gov/documents/2022/11/16/2022-24958/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-instituting>

<sup>3</sup> FSI Comment on SR-FINRA-2022-021: Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision), available at <https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138367-308400.pdf>

support the extension of temporary relief to allow remote inspections through December 31, 2023 or until the Remote Inspections Pilot Program is approved.

### **Background on FSI Members**

FSI is an advocacy association comprised of members from the independent financial services industry. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52 percent of all producing registered representatives.<sup>4</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (“IBD”).<sup>5</sup> FSI’s IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions.

FSI members make substantial contributions to our nation’s economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.<sup>6</sup>

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

### **Discussion**

FSI appreciates the opportunity to provide comments on the extension of temporary relief to allow the use of remote inspections into 2023. For calendar year 2022, many members report that they employed a combination of remote inspections (observing the requirements established by FINRA’s temporary relief) and in-person inspections (frequently performed during times of lower community spread as Covid-19 transmission rates and health-related concerns fluctuated during 2022). Members have found success using technology to assist in completing inspections, leveraging video conferencing tools, email and document review (including using secure websites to obtain scanned documents), and using publicly available searches, for example, to review for any undisclosed outside business activities. Given FSI members’ business model, our members have generally operated in a decentralized structure and were particularly well-positioned in advance of the pandemic to pivot and adapt supervisory functions and inspections to rely on technology and remote communications to enhance the effectiveness of their supervision programs. Many IBD firms, even prior to the pandemic, employed technology as part of their supervision process. For example,

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<sup>4</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

<sup>5</sup> The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term “investment adviser” or “adviser” in this letter is a reference to a firm or individual registered with the Securities and Exchange Commission (SEC) or state securities division as an investment adviser.

<sup>6</sup> Oxford Economics for the Financial Services Institute, The Economic Impact of FSI’s Members (2020).

a considerable amount of pre-work was conducted prior to arriving at a physical location to perform an office inspection. The pandemic prompted IBD firms to optimize and expand on these already well-tested and proven technologies to enhance their supervision capabilities. As such, firm supervisors were already effectively performing many essential tasks remotely. FSI believes that the criteria, safeguards, and requirements established in Supplementary Material .17, when firms use remote inspections, will continue to advance investor protection.

In addition, while many of the public health concerns relating to Covid-19 have lessened from 2020, this fall season has presented what some health officials have described as a “tripledemic” or the confluence of influenza, RSV, and coronavirus.<sup>7</sup> Health officials have also warned that Covid-19 could possibly again overwhelm hospitals (especially during a materializing aggressive flu season) depending on new variants.<sup>8</sup> The flexibility provided by the extension of the temporary relief allowing for remote inspections will best position firms to appropriately handle these types of predicted health-related challenges.

Lastly, members typically begin planning for the next calendar year’s inspections, in this case 2023, during the fourth quarter of the year prior. Given the timing of events relating to the Remote Inspections Pilot Program and the order instituting proceedings to determine whether to approve or disapprove, the extension of the temporary relief enables firms to best allocate their compliance resources and gives needed flexibility in terms of hiring and travel budgets while the Commission considers approval (or denial) of the Remote Inspections Pilot Program. Should the SEC approve the Remote Inspections Pilot Program, the extension of this temporary relief will also assist firms in preparing appropriately to participate in the pilot program. Given practical planning considerations, our members appreciate FINRA’s request to extend the remote inspection temporary relief into 2023.

### Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with the SEC and FINRA on this and other regulatory efforts. Thank you for considering FSI’s comments. Should you have any questions, please contact me at [REDACTED]

Respectfully submitted,



David T. Bellaire, Esq.  
Executive Vice President & General Counsel

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<sup>7</sup> See Fenit Nirappil, CDC Warns of Tough Winter as Flu, RSV and Covid Collide, Washington Post (November 4, 2022), available at <https://www.washingtonpost.com/health/2022/11/04/flu-rsv-covid-cases-surge/>

<sup>8</sup> See *id.*