

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93002; File No. SR-FINRA-2021-023)

September 15, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 14, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) to include calendar year 2022 inspection obligations through June 30,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

2022 within the scope of the supplementary material.⁴ The proposed extension of Rule 3110.17 is necessary to address the continuing operational challenges resulting from the COVID-19 pandemic many member firms face in planning for and timely conducting, during the first half of calendar year 2022, the on-site inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2022.

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

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3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

••• Supplementary Material: -----

.01 through .16 No Change.

.17 Temporary Relief to Allow Remote Inspections for Calendar Years 2020 and [Calendar Year] 2021, and Through June 30 of Calendar Year 2022.

(a) Use of Remote Inspections. Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in calendar years 2020, [and calendar year] 2021 and 2022 pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must be

⁴ The proposed rule change will automatically sunset on June 30, 2022. FINRA will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond June 30, 2022.

completed on or before March 31, 2021 and inspections for calendar year 2021 must be completed on or before December 31, 2021. With respect to a member's obligation to conduct an inspection of an office or location in calendar year 2022, a member has the option to conduct those inspections remotely only through June 30, 2022. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) Written Supervisory Procedures for Remote Inspections. Consistent with a member's obligation under Rule 3110(b)(1), a member that elects to conduct [each of] its [calendar year 2020 or calendar year 2021] inspections remotely for any of the calendar years specified in this supplementary material must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable FINRA rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (1) a description of the methodology, including technologies permitted by the member, that may be used to conduct remote inspections; and (2) the use of other risk-based systems employed generally by the member firm to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member's overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a member's remote inspection of an office or

location identifies any indicators of irregularities or misconduct (i.e., “red flags”), the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the member’s operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by this Rule 3110.17 does not extend to a member’s inspection requirements beyond [calendar year 2021] June 30, 2022 and such inspections must be conducted in compliance with Rule 3110(c).

(d) Documentation Requirement. A member must maintain and preserve a centralized record for each of calendar years 2020 and [calendar year] 2021, and for calendar year 2022 through June 30, 2022 only that separately identifies: (1) all offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Rule 3110.17(c). A member’s documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted member firms, regulators, investors and other stakeholders. In response to the pandemic, FINRA began providing temporary relief to member firms from specified FINRA rules and requirements, including Rule 3110. In June 2020, FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections), which has expired by its terms, that extended the time by which member firms must complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021, but with the expectation that firms would conduct their inspections on-site.⁵ FINRA subsequently adopted Rule 3110.17, which automatically sunsets on December 31, 2021, to provide firms the option of satisfying their inspection obligations under Rule 3110(c) remotely for calendar years 2020 and 2021, subject to specified conditions,⁶ due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. While there are signs of improvement, much uncertainty remains. The emergence of the Delta variant,⁷ dissimilar vaccination rates

⁵ See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019).

⁶ See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040).

⁷ See The Centers for Disease Control and Prevention (“CDC”), What You Need to Know about Variants (stating, in part, that “the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID-19.”), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (updated September 3,

throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.⁸

Through recent discussions with FINRA's advisory committees and other industry representatives, FINRA understands that while some firms have taken affirmative steps to develop and implement phased-in office re-entry plans based on local conditions, there are many other member firms that have not. Those firms continue to assess the complexity of when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (e.g., personal residence).⁹ Many member firms, like other employers across

2021). See also CDC, The Possibility of COVID-19 Illness after Vaccination: Breakthrough Infections (stating, in part, that "COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19. . . People who get vaccine breakthrough infections can be contagious."), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (updated August 23, 2021).

⁸ For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>. More recently, President Joe Biden on August 31, 2021, briefed the press on, among other things, the government's response to the COVID-19 surge, noting the government's continuing efforts to help states with Delta variant outbreaks. See <https://www.whitehouse.gov/briefing-room/press-briefings/2021/08/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-53/>.

⁹ Even FINRA staff, with limited exceptions, continue to work remotely to protect their health and safety. As indicated in its previous filings concerning other pandemic-related temporary relief from specified FINRA rules and requirements, FINRA has established a COVID-19 task force to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. See

the U.S., still maintain telework arrangements with their employees and have not resumed travel schedules at pre-pandemic levels as travel remains a risk, particularly for the segment of the U.S. population that is not fully vaccinated and for their families.¹⁰ Continuing health and safety protocols and policies regarding the opening of mass transit systems and schools in many areas also are key factors being considered by firms in developing their plans.

Against this setting, firms are trying to plan for calendar year 2022 inspections of their offices of supervisory jurisdiction, branch offices, and non-branch locations to comply with Rule 3110(c). The need for firms to establish inspection schedules for the coming year and ensure there is adequate, experienced staff available to travel and conduct on-site inspections within the context of fluid work locations presents a unique complexity for many firms in terms of planning and deploying resources. Even with increased availability of vaccines and other promising signs that the pandemic is receding in the U.S., FINRA understands that many firm personnel are still working from alternative work locations, and have not resumed traveling or are reluctant to do so at pre-pandemic levels amid persistent significant health and safety concerns.¹¹ For

Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169, 47170 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-019).

¹⁰ The CDC counts people as being “fully vaccinated” if they received two doses on different days (regardless of time interval) of a two-dose vaccine or received one dose of a single-dose vaccine. See CDC, COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited September 13, 2021).

¹¹ See Emily Cadman, Stephan Kahl, et al., Surging Delta Cases Reverse the World’s March Back to the Office (stating, in part, “The spread of the delta variant has forced many U.S. employers that had been hoping to get staff back to their desks after Labor Day to delay those plans until at least October—or even next year.”), Bloomberg (August 20, 2021), <https://www.bloomberg.com/graphics/2021-return-to-office/>; see also Rob Stein & Selena Simmons-Duffin, The Delta Variant Will Drive A Steep Rise In U.S. COVID Deaths, A New Model Shows, NPR (July 22, 2021),

unvaccinated persons in particular, health and safety risks in connection with returning to the office with other personnel still remain worrisome and travel still poses a risk of contracting and spreading COVID-19.¹²

As we are now late into the third quarter of calendar year 2021, FINRA believes extending Rule 3110.17 through June 30, 2022 represents a prudent accommodation.¹³ The proposed extension would provide clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Rule 3110.17 to cover part of calendar year 2022 inspection obligations through June 30, 2022 only, FINRA is not proposing to amend the other conditions of the temporary rule. The proposed amendments to Rule 3110.17 would simply provide that for calendar year 2022, a member has the option to conduct those inspections remotely through June 30, 2022. The current conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time

<https://www.npr.org/sections/health-shots/2021/07/22/1019475669/delta-variant-will-drive-a-steep-rise-in-covid-deaths-model-shows>.

¹² See CDC, Workplaces and Businesses, <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html> (updated September 8, 2021); CDC, Domestic Travel During COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (updated August 25, 2021); and CDC, When NOT to Travel: Avoid Spreading COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/when-to-delay-travel.html> (updated August 20, 2021).

¹³ See supra note 4.

would also enable FINRA to further monitor the effectiveness of remote inspections and their impacts – positive or negative – on firms’ overall supervisory systems in the evolving workplace.

FINRA continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 3110(c) obligations during the pandemic, and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing to make the proposed rule change operative on January 1, 2022.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In recognition of the ongoing impact of COVID-19 on performing the on-site inspection component of Rule 3110(c), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely during the first half of calendar year 2022. This temporary proposed supplementary material does not relieve firms from meeting the core

¹⁴ 15 U.S.C. 78o-3(b)(6).

regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, FINRA believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The potential economic impacts of Rule 3110.17 as described in File No. SR-FINRA-2020-040 continue to have applicability to the proposed rule change herein. The proposed rule change would extend the temporary relief to include calendar year 2022 inspection obligations through June 30, 2022 within the scope of the supplementary material without making substantive changes to the other aspects of the provision. FINRA believes that the proposed temporary extension would afford firms the time needed to determine when and how to effectively and safely implement their work re-entry plans, which must take into account multiple factors, including local health and safety conditions, without diminishing investor protection.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-023 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2021-023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2021-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).