

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94018; File No. SR-FINRA-2022-001)

January 20, 2022

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 Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 (Supervision)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 10, 2022, 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,<sup>3</sup> 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 Years 2020 and 2021, and Through June 30 of Calendar Year 2022) under FINRA Rule 3110 (Supervision) to include calendar year 2022 inspection obligations through December 31, 2022 within the scope of the supplementary

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

material.<sup>4</sup> The proposed additional six-month extension of Rule 3110.17 is necessary to address the operational challenges resulting from the COVID-19 pandemic that many member firms continue to face in planning for and timely conducting, during the second half of calendar year 2022, the on-site inspection component of Rule 3110(c) (Internal Inspections) at locations requiring inspection in calendar year 2022.<sup>5</sup>

Below is the text of the proposed rule change. Proposed new language is in italics; 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 2021, and Through [June 30]December 31 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, 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

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<sup>4</sup> The proposed rule text changes to Rule 3110.17 are applied to the version that becomes operative on January 1, 2022 and automatically sunsets on June 30, 2022.

<sup>5</sup> The proposed rule change will automatically sunset on December 31, 2022. FINRA will submit a separate rule filing if it seeks to extend the duration of the temporary proposed rule beyond December 31, 2022.

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 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]December 31, 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 its 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 [June 30]December 31, 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 2021, and for calendar year 2022 through [June 30]December 31, 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

In the midst of the global COVID-19 pandemic where the United States recorded its first case of COVID-19 in early 2020,<sup>6</sup> and the attendant logistical challenges member firms were encountering to satisfy the on-site inspection component of their Rule 3110(c) requirements, FINRA adopted Rule 3110.17 to provide a tailored regulatory alternative for member firms to have the option, subject to specified conditions, to complete their inspection obligations remotely.<sup>7</sup> While there were some signs that the pandemic was receding for a subsequent period of time, much uncertainty still remained. The emergence of the Delta variant, dissimilar vaccination rates throughout the U.S., and the significant uptick in transmissions in many locations during the summer of 2021 indicated that COVID-19 remained an active and real public health concern.<sup>8</sup> Against this setting, FINRA understood the complexity firms were

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<sup>6</sup> See generally Centers for Disease Control and Prevention (“CDC”), CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html> (last visited January 10, 2022).

<sup>7</sup> 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) (citing SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and Regulatory Notice 11-54 (November 2011) for the expectation that firms must conduct their inspections on-site).

<sup>8</sup> See Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508, 52509 nn.7 & 8 (September 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-023) (“Extension No. 1”) (becoming operative on January 1, 2022).

facing in assessing 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).<sup>9</sup> Accordingly, in September 2021, FINRA extended Rule 3110.17 through June 30, 2022 to give firms clarity on their inspection requirements at least for the first half of 2022 and to 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.<sup>10</sup>

The emergence of the new Omicron variant in November 2021 and its rapid spread in the U.S. since December 1, 2021, the date on which the first confirmed case of Omicron in the U.S.

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<sup>9</sup> Since March 2020, FINRA staff, with limited exceptions, have continued 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 Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695, 71696 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-031). Similarly, the SEC has remained in a telework posture since March 2020 and has recently indicated that in 2022, it “will continue to monitor the scientific data about COVID-19 and national, state, and local guidance to determine the appropriate operating posture for the agency’s workforce.” See the SEC’s Fiscal Year 2021 Agency Financial Report, <https://www.sec.gov/files/sec-2021-agency-financial-report.pdf>.

<sup>10</sup> See Extension No. 1, *supra* note 8.

was identified,<sup>11</sup> indicate that the active and real public health concerns about COVID-19 are unabated.<sup>12</sup>

Due to the continued logistical challenges of going on-site to branch offices or locations while these public health and safety concerns related to COVID-19 persist, and the continued risk from the Delta and new Omicron variants, the need for firms to establish inspection schedules for the second half of 2022 and ensure there is adequate, experienced staff available to travel and conduct on-site inspections within the context of fluid work locations continues to present a unique complexity for many firms in terms of planning and deploying resources. Even with increased availability of vaccines, FINRA understands that many firm personnel are still

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<sup>11</sup> See CDC, Omicron Variant: What You Need to Know, <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (updated December 20, 2021).

<sup>12</sup> In November 2021, the U.S. Office of Personnel Management (“OPM”), which serves as the chief human resources agency and personnel policy manager for the Federal Government, released an updated guide to telework and remote work, noting, among other things, that “[t]he COVID-19 pandemic forced even more adoption of telework and sparked a nationwide focus on telework as an important tool for safely and efficiently delivering mission-critical services in the public and private sectors during both short- and long-term emergencies. . . . As we look to the future, OPM is encouraging agencies to strategically leverage workplace flexibilities such as telework, remote work, and alternative/flexible work schedules as tools to help attract, recruit, and retain the best possible workforce.” See OPM, 2021 Guide to Telework and Remote Work in the Federal Government: Leveraging Telework and Remote Work in the Federal Government to Better Meet Our Human Capital Needs and Improve Mission Delivery (November 2021), <https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf>. Further, on December 2, 2021, President Biden announced new actions to protect Americans against the Delta and Omicron variants. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-president-biden-announces-new-actions-to-protect-americans-against-the-delta-and-omicron-variants-as-we-battle-covid-19-this-winter/>. See also Lena H. Sun, Joel Achenbach, Laurie McGinley & Tyler Pager, Omicron spreading rapidly in U.S. and could bring punishing wave as soon as January, CDC warns, Washington Post (December 14, 2021), <https://www.washingtonpost.com/health/2021/12/14/omicron-us-spread/>.

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. As a result of the new Omicron variant, many employers have further delayed or modified their return to office plans.<sup>13</sup> For 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.<sup>14</sup> FINRA believes extending Rule 3110.17 through December 31, 2022 represents a prudent accommodation.<sup>15</sup> The proposed additional six-month extension would provide further 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.

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<sup>13</sup> See Jennifer Surane & Angelica Peebles, ‘I Was Wrong’: Omicron Wrecks CEOs’ Plans for Office Return (describing how the “new wave of Covid uncertainty is upending business plans from Wall Street to Silicon Valley.”), Bloomberg (December 16, 2021), <https://www.bloomberg.com/news/articles/2021-12-16/i-was-wrong-omicron-wrecks-ceos-plans-for-u-s-office-return>; see also Nne D’Innocenzio, Omicron Cases Have Companies Rethinking Return to Work Plans (noting, in part, “how difficult it is for companies to set firm plans for their employees’ mandatory return as worries about a spike in new cases or new variants keep shifting deadlines. This fall, the delta variant spurred many big companies to postpone a mandatory return to early next year.”), Time (December 10, 2021), <https://time.com/6127429/omicron-companies-rethinking-return-to-work/>.

<sup>14</sup> See generally CDC, Workplaces and Businesses, <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html> (updated October 18, 2021); CDC, Domestic Travel During COVID-19 (stating, among other things, “You might have been exposed to COVID-19 on your travels. You might feel well and not have any symptoms, but you can still be infected and spread the virus to others. People who are not fully vaccinated are more likely to get COVID-19 and spread it to others.”), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (updated January 4, 2022).

<sup>15</sup> See supra note 5.



By further extending Rule 3110.17 to cover the second half of calendar year 2022 inspection obligations through December 31, 2022, FINRA is not proposing to amend the other conditions of the temporary rule. The proposed amendments to Rule 3110.17 would provide that for calendar year 2022, a member has the option to conduct those inspections remotely through December 31, 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 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 ongoing 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 July 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,<sup>16</sup> 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, and the emergence of the Delta variant and, more recently, the new Omicron variant, 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 second half of calendar year 2022. This temporary proposed supplementary material does not relieve firms from meeting the core 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 and the emergence of new variants, 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

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<sup>16</sup> 15 U.S.C. 78q-3(b)(6).

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 December 31, 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 Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2022-001 on the subject line.

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-2022-001. 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 10:00 a.m.

and 3:00 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-2022-001 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.<sup>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).