

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98046; File No. SR-FINRA-2023-007)

August 2, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as modified by Amendment No. 1, to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision)

I. Introduction

On April 14, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2023-007 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder, to adopt a voluntary, three-year remote inspections pilot program to allow eligible broker-dealers to elect to fulfill their obligation under paragraph (c) (Internal Inspections) of FINRA Rule 3110 (Supervision) by conducting inspections of eligible branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified safeguards and limitations (the “Pilot”).³ The proposed rule change was published for public comment in the Federal Register on May 4, 2023.⁴ The Commission received thirteen comment letters related to this filing.⁵ On June 7, 2023, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See infra note 4.

⁴ Exchange Act Release No. 97398 (Apr. 28, 2023), 88 FR 28620 (May 4, 2023) (File No. SR-FINRA-2023-007) (“Notice”).

⁵ The comment letters are available at <https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007.htm>.

to determine whether to approve or disapprove the proposed rule change to August 2, 2023.⁶ On August 1, 2023, FINRA filed an amendment to modify the proposed rule change (“Amendment No. 1”), and stated it anticipates submitting a response to comments by separate letter.⁷

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁸ to solicit comments on the proposed rule change, as modified by Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 (hereinafter referred to as the “proposed rule change” unless otherwise specified).

II. Description of the Proposed Rule Change

A. Background

FINRA Rule 3110(c)(1) requires a broker-dealer to inspect its locations with a frequency that depends on the location’s classification as an office of supervisory jurisdiction (“OSJ”), branch office, or non-branch location.⁹ Rule 3110(c)(2) imposes various documentation requirements for inspections, including maintaining a written record of the date upon which each inspection is conducted.

As part of its response to the COVID-19 pandemic, FINRA adopted temporary Rule 3110.17, effective since November 2020, to provide member firms the option to conduct

⁶ See letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated June 7, 2023, <https://www.finra.org/sites/default/files/2023-06/sr-finra-2023-007-extension-no-1.pdf>.

⁷ See Amendment No. 1, <https://www.finra.org/sites/default/files/2023-08/SR-FINRA-2023-007-Amendment-1.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (SEC guidance on remote office supervision), <https://www.sec.gov/interps/legal/mrslb17.htm>; and Regulatory Notice 11–54 (November 2011) (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections, interpreting the inspection rule to require that inspections take place on-site).

inspections of their OSJs, branch offices, and non-branch locations remotely, subject to specified terms.¹⁰ Absent further regulatory action, once this temporary rule expires, FINRA rules would require member firms to perform only in-person inspections. FINRA believes it is appropriate to assess possible longer-term rule changes regarding its inspection program and is, therefore, proposing a voluntary, three-year Pilot.¹¹

B. The Proposed Rule Change

Proposed Rule 3110.18(a) would permit broker-dealers to perform remotely required inspections of OSJs, branch offices, and non-branch locations under the applicable provisions of Rule 3110(c)(1), subject to specified safeguards and limitations. The proposed supplementary material would automatically sunset on a date that is three years after the effective date.¹²

1. Controls and Safeguards

a. Risk Assessment (Proposed Rule 3110.18(b))

As originally proposed, proposed Rule 3110.18(b)(1) would require that prior to selecting any office or location for remote inspection, rather than an on-site inspection, the broker-dealer must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.¹³ Proposed Rule 3110.18(b)(2) also sets forth a non-exhaustive list of factors that the broker-dealer must consider and document as part

¹⁰ See Exchange Act Release No. 90454 (Nov. 18, 2020), 85 FR 75097 (Nov. 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040). See also Exchange Act Release No. 93002 (Sept. 15, 2021), 86 FR 52508 (Sept. 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-023); Exchange Act Release No. 94018 (Jan. 20, 2022), 87 FR 4072 (Jan. 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001); Exchange Act Release No. 96241 (Nov. 4, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-030). See also *infra* note 12.

¹¹ See Notice at 28624-25.

¹² If Rule 3110.17 has not already expired by its own terms, Rule 3110.17 will automatically sunset on the effective date of the Pilot. See proposed Rule 3110.18(m); see also Notice at 28634.

¹³ See proposed Rule 3110.18(b)(1).

of the risk assessment for each office, including: (1) the volume and nature of customer complaints; (2) the volume and nature of outside business activities, particularly investment-related; (3) the volume and complexity of products offered; (4) the nature of the customer base, including vulnerable adult investors; (5) whether associated persons are subject to heightened supervision; (6) failures by associated persons to comply with the member's written supervisory procedures; and (7) any recordkeeping violations.¹⁴ Amendment No. 1 modified proposed Rule 3110.18(b)(2) to add that, consistent with Rule 3110(a), the member's supervisory system must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.¹⁵

b. Written Supervisory Procedures for Remote Inspections (Proposed Rule 3110.18(c))

As originally proposed, proposed Rule 3110.18(c) would require a broker-dealer electing to participate in the Pilot ("participating broker-dealer") to adopt written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, and with applicable FINRA rules. Under the proposed provision, reasonably designed procedures for conducting remote inspections of offices or locations must address, among other things: (1) the methodology, including technology, that may be used to conduct remote inspections; (2) the factors considered in the risk assessment made for each applicable office or location; (3) the procedures specified in the data and information collection section of the proposed rule; and (4) the use of other risk-based systems employed generally by the member to identify and prioritize

¹⁴ See proposed Rule 3110.18(b)(2).

¹⁵ See Amendment No. 1.

for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.¹⁶ Amendment No. 1 modified proposed Rule 3110.18(c) to replace the word “adopt” with “establish, maintain, and enforce.”¹⁷

c. Effective Supervisory System (Proposed Rule 3110.18(d))

Proposed Rule 3110.18(d) states that 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 a member must maintain its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. Proposed Rule 3110.18(d) further states that a member’s use of a remote inspection of an office or location would be held to the same standards for review as set forth in FINRA Rule 3110.12 (Supervision; Standards for Reasonable Review). Furthermore, proposed Rule 3110.18(d) provides that where a participating broker-dealer’s remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., “red flags”), the participating broker-dealer may need to impose additional supervisory procedures for that office or location, or may need to provide for more frequent monitoring or oversight of that office or location, or both, including potentially a subsequent physical, on-site visit on an announced or unannounced basis.¹⁸

¹⁶ See proposed Rule 3110.18(c).

¹⁷ See Amendment No. 1.

¹⁸ See proposed Rule 3110.18(d). Additionally, proposed Rule 3110.18(j) would provide that a broker-dealer that fails to satisfy the conditions of Rule 3110.18, including the requirement to timely collect and submit the data and information to FINRA as set forth in proposed Rule 3110.18(h), would be ineligible to participate in the Pilot and must conduct on-site inspections of each office and location on the required cycle in accordance with Rule 3110(c).

d. Documentation Requirement (Proposed Rule 3110.18(e))

Proposed Rule 3110.18(e) would require a participating broker-dealer to maintain and preserve a centralized record for each Pilot Year¹⁹ in which it participates that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in proposed rule 3110.18(d) (Effective Supervisory System). Further, proposed Rule 3110.18(e) would require a participating broker-dealers' documentation of the results of a remote inspection for an office or location to identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.²⁰

2. Firm Level Requirements (Proposed Rule 3110.18(f))

Proposed Rule 3110.18(f) includes a list of conditions to which a broker-dealer must adhere in order to participate in the Pilot, as well as a list of criteria that would render firms ineligible to participate in the Pilot.²¹

¹⁹ Proposed Rule 3110.18(l) would set forth the meanings underlying "Pilot Year" as: (1) Pilot Year 1 would be the period beginning on the effective date of the proposed pilot program and ending on December 31 of the same year; (2) Pilot Year 2 would mean the calendar year period following Pilot Year 1, beginning on January 1 and ending on December 31; and (3) Pilot Year 3 would mean the calendar year period following Pilot Year 2, beginning on January 1 and ending on December 31; and (4) if applicable, where Pilot Year 1 covers a period that is less than a full calendar year, then Pilot Year 4 would mean the period following Pilot Year 3, beginning on January 1 and ending on a date that is three years after the effective date. See proposed Rule 3110.18(l).

²⁰ See proposed Rule 3110.18(e). FINRA stated that Amendment No. 1 also contains non-substantive updates to the proposed rule text to improve readability. See Amendment No. 1.

²¹ See proposed Rule 3110.18(f).

a. Firm Level Ineligibility Criteria (Proposed Rule 3110.18(f)(1))

Under proposed Rule 3110.18(f)(1), a broker-dealer would be ineligible to conduct remote inspections of any of its offices or locations if the member, at any time during the Pilot: (1) is or becomes designated as a Restricted Firm under FINRA Rule 4111;²² (2) is or becomes designated as a Taping Firm under FINRA Rule 3170;²³ (3) receives a notice from FINRA pursuant to Rule 9557 regarding compliance with FINRA Rule 4110, Rule 4120, or Rule 4130;²⁴ (4) is or becomes suspended from membership by FINRA;²⁵ (5) based on the date in the Central Registration Depository (“CRD”)²⁶ had its FINRA membership become effective within the prior 12 months;²⁷ or (6) is or has been found within the past three years by the Commission or FINRA to have violated FINRA Rule 3110(c).²⁸

b. Firm Level Conditions (Proposed Rule 3110.18(f)(2))

i. Recordkeeping

Proposed Rule 3110.18(f)(2)(A) would require each participating broker-dealer to have a recordkeeping system that: (1) makes and keeps current, and preserves records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member’s own supervisory procedures under FINRA Rule 3110; (2) ensures such

²² See proposed Rule 3110.18(f)(1)(A).

²³ See proposed Rule 3110.18(f)(1)(B).

²⁴ See proposed Rule 3110.18(f)(1)(C).

²⁵ See proposed Rule 3110.18(f)(1)(D).

²⁶ FINRA stated that CRD is the central licensing and registration system that FINRA operates for the benefit of the Commission, FINRA and other self-regulatory organizations, state securities regulators, and broker-dealers. The information maintained in the CRD system is reported by registered broker-dealers, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See Notice at 28629 n. 76; see generally Rule 8312 (FINRA BrokerCheck Disclosure).

²⁷ See proposed Rule 3110.18(f)(1)(E).

²⁸ See proposed Rule 3110.18(f)(1)(F). FINRA stated that the term “found” as used in this proposed criterion would carry the same meaning as Rule 4530.03 (Meaning of “Found”). See Notice at 28630 n.77.

records are not physically or electronically maintained and preserved at the office or location subject to remote inspection; and (3) gives the member prompt access to such records.²⁹

ii. Surveillance and Technology Tools

Proposed Rule 3110(f)(2)(B) would require each participating broker-dealer to determine that their surveillance and technology tools are appropriate to supervise the types of risks presented by each such remotely supervised office or location.

3. Location Level Requirements (Proposed Rule 3110.18(g))

Proposed Rule 3110.18(g) includes a list of conditions an office or location must adhere to in order to participate in the Pilot, as well as a list of criteria that would render offices or locations ineligible to participate in the Pilot.

a. Location Level Ineligibility Criteria (Proposed Rule 3110.18(g)(1))

Under proposed Rule 3110.18(g)(1), a participating broker-dealer's office or location would not be eligible for a remote inspection if at any time during the Pilot: (1) one or more associated persons at such office or location is or becomes subject to a mandatory heightened supervisory plan under the rules of the Commission, FINRA, or a state regulatory agency;³⁰ (2) one or more associated persons at such office or location is or becomes 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 described above or otherwise as a condition to approval or permission for such association;³¹ (3) the firm is or becomes subject to FINRA Rule

²⁹ See proposed Rule 3110.18(f)(2)(A)

³⁰ See proposed Rule 3110.18(g)(1)(A).

³¹ See proposed Rule 3110.18(g)(1)(B).

1017(a)(7) as a result of one or more associated persons at such office or location;³² (4) one or more associated persons at such office or location has an event in the prior three years that required a “yes” response to certain subcategories of Question 14 of Form U4;³³ (5) one or more associated persons at such office or location is or becomes subject to a disciplinary action taken by the member that is or was reportable under FINRA Rule 4530(a)(2);³⁴ (6) one or more associated persons at such office or location is engaged in proprietary trading, including the incidental crossing of customer orders, or the direct supervision of such activities;³⁵ or (7) the office or location handles customer funds or securities.³⁶

b. Location Level Conditions (Proposed Rule 3110.18(g)(2))

Proposed Rule 3110.18(g)(2) would require each specific office or location that participates in the Pilot to satisfy the following conditions: (1) electronic communications would be made through the broker-dealer’s electronic system; (2) the associated person’s correspondence and communications with the public would be subject to the broker-dealer’s supervision in accordance with FINRA Rule 3110; and (3) no books or records of the member required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the participating broker-dealer’s own written supervisory procedures under FINRA Rule 3110, would be physically or electronically maintained and preserved at such office or location.³⁷

³² See proposed Rule 3110.18(g)(1)(C). Amendment No. 1 removed the word “or” at the end of the originally proposed Rule 3110.18(g)(1)(C). See *supra* note 20.

³³ See proposed Rule 3110.18(g)(1)(D).

³⁴ See proposed Rule 3110.18(g)(1)(E).

³⁵ See proposed Rule 3110.18(g)(1)(F).

³⁶ See proposed Rule 3110.18(g)(1)(G).

³⁷ See proposed Rule 3110.18(g)(2).

4. Data and Information Collection Requirement (Proposed Rule 3110.18(h))
 - a. Data and Information (Proposed Rule 3110.18(h)(1))

As originally proposed, proposed Rule 3110.18(h) would require a participating broker-dealer to collect and produce to FINRA on a quarterly basis the following data and information about its participating offices or locations:³⁸ (1) the total number of inspections—on-site and remote—completed during each calendar quarter;³⁹ (2) the number of those offices or locations in each calendar quarter that were subject to an on-site inspection because of a “finding,” (as described under proposed Rule 3110.18(h)(1));⁴⁰ (3) the number of offices or locations for which a remote inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings;⁴¹ and (4) the number of offices or locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, a list of the most significant findings.⁴² Amendment No. 1 modified proposed Rule 3110.18(h) to delete the word “most” from the phrase “most significant findings.”⁴³

³⁸ See supra note 20.

³⁹ See proposed Rule 3110.18(h)(1)(A), (B), and (C).

⁴⁰ See proposed Rule 3110.18(h)(1)(D).

⁴¹ See proposed Rule 3110.18(h)(1)(E). According to FINRA, a “significant finding” would be one that should prompt the broker-dealer to take further action that could include escalation to the appropriate channels at the firm for further review, the result of which may be enhanced monitoring or surveillance of a particular event or activity through more frequent inspections (remotely or on-site), on an announced or unannounced basis, of the office or location, or other targeted reviews of the root cause of the finding. FINRA states that examples of some findings that may prompt escalation or further internal review by the appropriate firm personnel include, among other things, the use of unapproved communication mediums, customer complaints, or undisclosed outside business activities or private securities transactions. See Amendment No. 1, citing Notice at 28632 n.92.

⁴² See proposed Rule 3110.18(h)(1)(F); see also supra note 20.

⁴³ See Amendment No. 1; see also supra note 41.

In addition, at the time a participating broker-dealer first delivers the data points described above, the proposed rule change would require participating broker-dealers to provide FINRA their written supervisory procedures for remote inspections that account for: (1) escalating significant findings; (2) new hires; (3) supervising brokers with a significant history of misconduct; and (4) outside business activities and “doing business as” designations.⁴⁴ Any subsequent amendment to a participating broker-dealer’s written supervisory procedures for remote inspections would need to be included in the next quarterly data submission to FINRA.

b. Additional Data and Information for Pilot Year 1, if Less Than Full Calendar Year (Proposed Rule 3110.18(h)(2))⁴⁵

As originally proposed, if the first year of the Pilot covers a period of time that is less than a full calendar year, the proposed rule change would require participating broker-dealers to also collect and produce to FINRA the following data and information no later than December 31 of the first Pilot Year: (1) the number of offices and locations with an inspection completed during the full calendar year of the first Pilot Year;⁴⁶ (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A) as originally proposed⁴⁷ that were inspected remotely during the full calendar year of the first Pilot Year;⁴⁸ and (3) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A) as originally proposed⁴⁹ that were

⁴⁴ See proposed Rule 3110.18(h)(1)(G)(i) through (iv).

⁴⁵ Amendment No. 1 added the word “in” to proposed Rule 3110.18(h)(2). See supra note 20.

⁴⁶ See proposed Rule 3110.18(h)(2)(A) as originally proposed.

⁴⁷ See supra note 46 and accompanying text.

⁴⁸ See proposed Rule 3110.18(h)(2)(B) as originally proposed.

⁴⁹ See supra note 46 and accompanying text.

inspected on-site during the full calendar year of the first Pilot Year.⁵⁰ Amendment No. 1 modified the time period of the originally proposed Rule 3110.18(h)(2) to capture data and information about inspections that may occur in the time period preceding the effective date of the proposed Pilot if such effective date results in the first Pilot Year covering a period of time that is less than a full calendar year. Specifically, a participating broker-dealer would be required to collect and provide to FINRA the following data separately for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations: (1) the number of offices and locations with an inspection completed between January 1 of the first Pilot Year and the day before the effective date of the Pilot;⁵¹ (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A)⁵² that were inspected remotely between January 1 of the first Pilot Year and the day before the effective date of the Pilot;⁵³ and (3) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A)⁵⁴ that were inspected on-site between January 1 of first Pilot Year and the day before the effective date of the Pilot.⁵⁵

In addition, Amendment No. 1 modified proposed Rule 3110.18(h)(2) to impose two new obligations to collect and produce data and information to FINRA. Specifically, participating broker-dealers would be required to collect and provide to FINRA the following: (1) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(B)⁵⁶ where findings were

⁵⁰ See proposed Rule 3110.18(h)(2)(C) as originally proposed. For items (1) through (3), a member would be required to provide separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. See proposed Rule 3110.18(h)(2) as originally proposed.

⁵¹ See proposed Rule 3110.18(h)(2)(A); see also Amendment No. 1.

⁵² See supra note 51 and accompanying text.

⁵³ See proposed Rule 3110.18(h)(2)(B); see also Amendment No. 1.

⁵⁴ See supra note 51 and accompanying text.

⁵⁵ See proposed Rule 3110.18(h)(2)(C); see also Amendment No. 1.

⁵⁶ See supra note 53 and accompanying text.

identified, the number of those findings, and a list of the significant findings;⁵⁷ and (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(C)⁵⁸ where findings were identified, the number of those findings, and a list of the significant findings.⁵⁹

c. Additional Data and Information for Calendar Year 2019

(Proposed Rule 3110.18(h)(3))⁶⁰

As originally proposed, proposed Rule 3110.18(h)(3) would require a participating broker-dealer to collect and provide to FINRA the following calendar year 2019 data and information no later than December 31 of Pilot Year 1 (as defined under proposed Rule 3110.18(l)): (1) the number of offices and locations with an inspection completed during calendar year 2019; and (2) the number of offices and locations in item (1) where findings were identified, the number of those findings and a list of the most significant findings.⁶¹ Amendment No. 1 modified proposed Rule 3110.18(h)(3) to require a participating broker-dealer to “act in good faith using best efforts” to collect and provide to FINRA such data. Amendment No. 1 also deleted the word “most” from the phrase “most significant findings.”⁶²

⁵⁷ See proposed Rule 3110.18(h)(2)(D); see also Amendment No. 1.

⁵⁸ See supra note 55 and accompanying text.

⁵⁹ See proposed Rule 3110.18(h)(2)(E); see also Amendment No. 1.

⁶⁰ Amendment No. 1 added the word “and” within Rule 3110.18(h)(3)(A). See supra note 20.

⁶¹ See proposed Rule 3110.18(h)(3) as originally proposed. For items (1) and (2), a member would be required to provide separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. See id.

⁶² See proposed Rule 3110.18(h)(3)(B); see also Amendment No. 1; see also supra note 43 and accompanying text.

d. Written Policies and Procedures (Proposed Rule 3110.18(h)(4))

Proposed Rule 3110.18(h)(4) would require a participating broker-dealer to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data and information collection, and transmission requirements of the Pilot.⁶³

5. Election to Opt-In and Opt-Out of the Pilot (Proposed Rule 3110.18(i))

In general, proposed Rule 3110.18(i) would require a participating broker-dealer, at least five calendar days before the beginning of a Pilot Year (as defined under proposed Rule 3110.18(l)), to provide FINRA an “opt-in notice” in the manner and format determined by FINRA. By providing such opt-in notice to FINRA, the firm would agree to participate in the proposed pilot program for the duration of such Pilot Year and to comply with the requirements of Rule 3110.18.⁶⁴ A firm that provides the opt-in notice for a Pilot Year would be automatically deemed to have elected and agreed to participate in the Pilot for subsequent Pilot Years.⁶⁵ To opt out, proposed Rule 3110.18(i) would require a participating broker-dealer to provide FINRA with an “opt-out notice” at least five calendar days before the end of the then current Pilot Year.⁶⁶

⁶³ See proposed Rule 3110.18(h)(4).

⁶⁴ As stated in the Notice, a firm that participates in a Pilot Year would be committed to complying with the terms of proposed Rule 3110.18 for that Pilot Year. See Notice at 28633 n.97.

⁶⁵ See proposed Rule 3110.18(i).

⁶⁶ See id.

6. Determination of Ineligibility (Proposed Rule 3110.18(k))

Proposed Rule 3110.18(k) would authorize FINRA to make a determination in the public interest and for the protection of investors that a broker-dealer is no longer eligible to participate in the Pilot if the member fails to comply with the requirements of Rule 3110.18.⁶⁷

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2023-007 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.⁶⁸ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,⁶⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites

⁶⁷ In such instances, FINRA will provide written notice to the member of such determination and the member would no longer be eligible to participate in the Pilot and must conduct on-site inspections of required offices and locations in accordance with Rule 3110(c). See proposed Rule 3110.18(k).

⁶⁸ 15 U.S.C. 78s(b)(2)(B).

⁶⁹ Id.

the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days after the date of publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days after the date of publication in the Federal Register].

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-FINRA-2023-007 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-2023-007. This file number should be included on the subject line if email is used. To help the Commission process and review your

⁷⁰ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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. 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-FINRA-2023-007 and should be submitted on or before [insert date 21 days after the date of publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days after the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷¹

Sherry R. Haywood,

Assistant Secretary.

⁷¹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).