

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-98560; File No. SR-FINRA-2023-012

September 27, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; 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, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024

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 22, 2023, 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 Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024 inspection obligations through the earlier of the effective date of the remote inspections pilot program proposed in File No. SR-FINRA-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

2023-007, if approved, or June 30, 2024 within the scope of the supplementary material.⁴ FINRA is proposing to extend Rule 3110.17 to provide member firms continuity related to conducting inspections as part of satisfying the obligations of Rule 3110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.⁵ By statute, the Commission has until the end of December 2023 to approve or disapprove the Remote Inspections Pilot Program Proposal.⁶ Given the uncertainty as to whether the Commission will approve or disapprove the Remote Inspections Pilot Program Proposal by the end of calendar year 2023, FINRA believes that the proposed extension is necessary to provide firms the time to prepare for either the resumption of on-site inspections if the Commission disapproves the Remote Inspections Pilot Program Proposal, or alternatively, the implementation of the proposed remote inspections pilot program (“Pilot Program”) if the Commission approves the Remote Inspections Pilot Program Proposal.

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

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⁴ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (Notice of Filing of File No. SR-FINRA-2023-007) and Securities Exchange Act Release No. 98046 (August 2, 2023), 88 FR 53569 (August 8, 2023) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2023-007) (“Remote Inspections Pilot Program Proposal”).

⁵ SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices).

⁶ 15 U.S.C. 78s(b)(2); see also note 4, supra.

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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, 2021, 2022, [and] 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program, if Approved, or June 30, 2024.

(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 the calendar years specified in this supplementary material 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]have been completed on or before March 31, 2021. Inspections for calendar year 2021 must [be]have been completed on or before December 31, 2021, [and inspections] for calendar year 2022, [must be completed] on or before December 31, 2022, and for calendar year 2023, on or before December 31, 2023. With respect to a member's obligation to conduct an inspection of an office or location in calendar year [2023]2024, a member has the option to conduct those inspections remotely through the earlier of the effective date of the Remote Inspections [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31,

2023]June 30, 2024. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) No Change.

(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 the earlier of the effective date of the *Remote Inspections* [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024, and such inspections must be conducted in compliance with Rule 3110(c).

(d) No Change.

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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 response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, FINRA provided temporary relief to member firms from certain regulatory requirements, including those set forth under Rule 3110. To help alleviate the attendant logistical challenges member firms were encountering to satisfy the inspection component of their Rule 3110(c) requirements, FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections) to extend the time by which member firms were required to complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021 with the expectation that the extension did not relieve firms from the on-site portion of the inspections of their offices and locations,⁷ and subsequently adopted Rule 3110.17 to provide member firms the option, subject to specified requirements under the supplementary material, to complete remotely specified calendar year inspection obligations without an on-site visit to the

⁷ 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).

office or location.⁸ Rule 3110.17 has been extended and is currently set to end on December 31, 2023.⁹

The pandemic accelerated the industry's adoption of a broad remote work environment and FINRA recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of FINRA's overall efforts to modernize FINRA rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Commission to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.¹⁰

If the Commission approves the Remote Inspections Pilot Proposal, the proposed extension of Rule 3110.17 would allow both FINRA and the firms that are planning to participate in the proposed Pilot Program additional time to develop the technology and processes that will be essential to operationalize compliance with the Pilot Program's requirements. For example, firms will need to conduct an eligibility review, and conduct and document a risk assessment for each office and location that they elect to inspect remotely, and implement technology to collect and report the required data and information to FINRA.

⁸ 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).

⁹ See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-030) (extending the relief through December 31, 2023); see also Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001) (extending the relief through December 31, 2022) and Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-023) (extending the relief through June 30, 2022).

¹⁰ See note 4, supra.

Further, FINRA guidance will be needed to guide implementation in various circumstances.¹¹ Firms that do not elect to participate or would be excluded from participating in the proposed Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations¹² within the context of some lingering health concerns and fluid work locations.¹³ If the Commission disapproves the Remote Inspections Pilot Program Proposal, all firms would be impacted and would need additional time to staff, schedule and resume conducting on-site inspections of offices or locations.¹⁴

In sum, as calendar year 2024 is approaching its fourth quarter, the proposed extension of Rule 3110.17 would provide firms continuity in meeting their inspection obligations after the end of the Commission’s statutory deadline to approve or disapprove the Remote Inspections Pilot Proposal. If the Commission approves the Remote Inspections Pilot Proposal, the proposed additional time would allow FINRA to operationalize the Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the proposed Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2)

¹¹ As part of the implementation process, FINRA intends to publish a Regulatory Notice or other guidance about the operational aspects of the proposed Pilot Program.

¹² See note 5, supra.

¹³ While the World Health Organization declared an end to COVID-19 as a public health emergency, COVID-19 remains an ongoing public health problem. See WHO Director-General, Opening Remarks at the Media Briefing on COVID-19 (May 5, 2023) (stating, in part, that the “virus is here to stay. It is still killing, and it’s still changing. The risk remains of new variants emerging that cause new surges in cases and deaths.”), <https://www.who.int/news-room/speeches/item/who-director-general-s-opening-remarks-at-the-media-briefing---5-may-2023>; see also Benjamin J. Silk, et al., COVID-19 Surveillance After Expiration of the Public Health Emergency Declaration — United States, May 11, 2023 (stating, among other things, that “[a]lthough COVID-19 no longer poses the societal emergency that it did when it first emerged in late 2019, COVID-19 remains an ongoing public health challenge. By April 26, 2023, more than 104 million U.S. COVID-19 cases, 6 million related hospitalizations, and 1.1 million COVID-19–associated deaths were reported to CDC[.]”), 72 MMWR Morb Mortal Wkly Rep, 523–528 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7219e1-H.pdf>. Recent data on hospitalizations from the CDC indicate that the number of hospitalizations is up 7.7% (as of September 3 to September 9, 2023). See Centers for Disease Control and Prevents (“CDC”), COVID Data Tracker, Data Update for the United States, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited September 22, 2023).

¹⁴ See note 5, supra.

firms that are not planning to participate or are excluded from participating in the proposed Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of Rule 3110(c).

FINRA is not proposing to amend the other conditions of the temporary rule. 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. FINRA continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their Rule 3110(c) obligations under the current circumstances described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Rule 3110.17 to conduct 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 in-person inspections would be feasible and add value to the firms' supervisory program. FINRA emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Rule 3110.17 or in accordance with the proposed Pilot Program, or on-site, would be held to the existing standards of review under Rule 3110.12 (Standards for Reasonable Review).¹⁵

¹⁵ Those standards provide, in part, that based on the factors set forth under that supplementary material, members "may need to provide for more frequent review of certain locations."

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing to make the proposed rule change operative on January 1, 2024.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ 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. The proposed rule change is intended to provide firms certainty now as they plan their upcoming calendar year 2024 inspection program. 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 light of the planning associated with firms resuming on-site visits to offices and locations to satisfy Rule 3110(c)(1), if the Commission disapproves the Remote Inspections Pilot Program Proposal, and the significant planning requirements that the proposed Pilot Program, if approved, would entail for FINRA and the firms that elect to participate, FINRA believes that the proposed rule change provides sensibly tailored relief, 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

¹⁶ 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 that provides firms with the option to fulfill their inspection obligations remotely. The proposed extension would include calendar year 2024 inspection obligations through the earlier of the effective date of the Remote Inspections Pilot Program Proposal, if approved, or June 30, 2024 within the scope of the supplementary material without making substantive changes to the other aspects of the provision. In addition, the proposed extension would provide firms certainty for the reasons stated above. FINRA believes that this limited extension in temporary relief, together with the requirements for using the temporary relief in Rule 3110.17, would not diminish 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2023-012 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-2023-012. This file number should be included on the subject line if email 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. 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-2023-012 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).