

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96191; File No. SR-FINRA-2022-019

October 31, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110.

I. Introduction

On July 15, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change SR-FINRA-2022-019 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safeguards and limitations.<sup>3</sup> The proposed rule change was published for public comment in the Federal Register on August 2, 2022.<sup>4</sup> On September 14, 2022, 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 to determine whether to approve or disapprove the proposed rule change to October 31, 2022.<sup>5</sup>

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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> See infra note 4.

<sup>4</sup> Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (File No. SR-FINRA-2022-019 (“Notice”).

<sup>5</sup> See letter from Sarah Kwak, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated September 14, 2022.

On October 31, 2022, FINRA responded to the comment letters received in response to the Notice.<sup>6</sup>

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to solicit comments on the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The COVID-19 pandemic prompted FINRA to provide temporary relief to member firms from certain regulatory requirements.<sup>8</sup> For example, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR (Uniform Branch Office Registration Form) for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic (the “Form BR Temporary Suspension”).<sup>9</sup>

In the Notice, FINRA stated that as jurisdictions scale back pandemic-related restrictions, many member firms are moving towards a “blended workforce model” where employees work both on-site and in alternative locations, such as a private residence.<sup>10</sup> Currently, a private

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<sup>6</sup> See letter from Kosha Dalal, Vice President, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 31, 2022 (“FINRA Response”).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Notice at 47249.

<sup>9</sup> See FINRA Regulatory Notice 20-08 (March 2020) (“Regulaotry Notice 20-08”); see also Notice at note 5.

<sup>10</sup> See Notice at 47249.

residence at which certain supervisory functions occur would need to be registered and designated as a branch office or office of supervisory jurisdiction (“OSJ”) under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). Consequently, FINRA stated that absent further regulatory action, once the Form BR Temporary Suspension is lifted, FINRA rules would require member firms to “either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices.”<sup>11</sup> Under the proposed rule change, a new location designation, Residential Supervisory Location, would be treated as a non-branch location, subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>12</sup>

#### **B. Proposed Rule Change**

FINRA is proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location designation that would be treated as a non-branch location (*i.e.*, an unregistered office), subject to specified limitations. Specifically, under proposed Rule 3110.19(a), a Residential Supervisory Location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location; (2) the location is not held out to the public as an office; (3) the associated person does not meet with customers or prospective customers at the location; (4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii); (5) neither customer funds nor securities are handled at that location; (6) the associated person is assigned to a designated branch office,

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<sup>11</sup> Notice at 47256.

<sup>12</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110; (8) all electronic communications by the associated person at that location are made through the member's electronic system; (9) a list of the residence locations is maintained by the member; and (10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

Furthermore, under proposed Rule 3110.19(b), some members would be ineligible to designate any location as a Residential Supervisory Location, and some locations of otherwise eligible members would be ineligible to be designated as a Residential Supervisory Location. Specifically, all of a member's locations would be ineligible if: (1) the member is designated as a "Restricted Firm" under Rule 4111 (Restricted Firm Obligations); (2) the member is designated as a "Taping Firm" under Rule 3170 (Tape Recording of Registered Persons by Certain Firms); or (3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location. A specific location of an otherwise eligible member would be ineligible if: (1) one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member; (2) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04; (3) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the Commission, FINRA or state regulatory agency; (4) one or more associated persons at such location is 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 under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association; (5) one or more associated persons at such location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4;<sup>13</sup> or (6) one or more associated persons at a location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the Commission, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Exchange Act, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board.

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019 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.<sup>14</sup> Institution of proceedings is appropriate at this time in view of the legal and

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<sup>13</sup> Form U4’s Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures. See Notice at note 79.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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,<sup>15</sup> 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 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.<sup>16</sup>

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 from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other

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<sup>15</sup> Id.

<sup>16</sup> 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).

person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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 No. SR-FINRA-2022-019 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 No. SR-FINRA-2022-019. 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 No. SR-FINRA-2022-019 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days from publication in the Federal Register].

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

J. Lynn Taylor

Assistant Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).