

orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, April 25, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: Michael W. Mundt, Esq., Stradley Ronon Stevens & Young, LLP, at [MMundt@stradley.com](mailto:MMundt@stradley.com); Matthew R. DiClemente, Esq., Stradley Ronon Stevens & Young, LLP, at [MDiClemente@stradley.com](mailto:MDiClemente@stradley.com); and Melanie Ringold, Esq., Head of Legal, Americas, Invesco Ltd., 11 Greenway Plaza, Suite 1000, Houston, TX 77046.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated February 16, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97235; File No. SR-CBOE-2022-057]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Increase the Position and Exercise Limits for Options on Apple Inc. Stock ("AAPL")

March 31, 2023.

On November 7, 2022, Cboe Exchange, Inc. filed with the Securities and Exchange Commission (the "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to increase the position and exercise limits for options on Apple Inc. stock ("AAPL"). The proposed rule change was published for comment in the **Federal Register** on November 25, 2022.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change.

On December 22, 2022, pursuant to section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On February 22, 2023, the Commission instituted proceedings under section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On March 30, 2023, the Exchange withdrew the proposed rule change (SR-CBOE-2022-057).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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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 Securities Exchange Act Release No. 96353 (Nov. 18, 2022), 87 FR 72568.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 96570 (Dec. 22, 2022), 87 FR 80212 (Dec. 29, 2022).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 96965 (Feb. 22, 2023), 88 FR 12705 (February 28, 2023).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97237; File No. SR-FINRA-2023-006]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110 (Supervision)

March 31, 2023.

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 March 29, 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. 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 adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would align FINRA's definition of an office of supervisory jurisdiction ("OSJ") and the classification of a location that supervises activities at non-branch locations with the existing residential exclusions set forth in the branch office definition to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safeguards and limitations. In accordance with Rule 3110(c), as a non-branch location, a Residential Supervisory Location (or "RSL") would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years,<sup>3</sup> rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>4</sup> FINRA believes the proposal

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

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

<sup>3</sup> See FINRA Rules 3110(c)(1)(C) and 3110.13.

<sup>4</sup> SEC staff and FINRA have interpreted FINRA rules to require member firms to conduct on-site inspections of branch offices and unregistered offices (i.e., non-branch locations) in accordance with the periodic schedule described under Rule 3110(c)(1). See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011), <https://www.sec.gov/about/offices/ocie/riskalert-bdbranchinspections.pdf>, and *Regulatory Notice 11-54* (November 2011) (joint SEC and FINRA guidance stating, a "broker-dealer must conduct on-

strikes an appropriate balance to preserve investor protection while developing a risk-based approach for designating residential supervisory locations that includes key safeguards with respect to, among other things, books and records of the member, while excluding locations where higher risk activities may take place or associated persons that may pose higher risk are assigned. Subject to further modifications as described further below, the terms of the proposed rule change herein are largely similar to the proposed rule change FINRA filed with the SEC in July 2022.<sup>5</sup> FINRA withdrew the 2022 RSL Rule Filing on March 29, 2023 to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.<sup>6</sup>

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

## 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

##### a. Background

Early in 2020, the COVID-19 pandemic prompted FINRA and other

site inspections of each of its office locations; [OSJ]s 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.") (citation 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), <https://www.sec.gov/interp/legal/mrslb17.htm>.

<sup>5</sup> See Securities Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (Notice of Filing of File No. SR-FINRA-2022-019) ("2022 RSL Rule Filing"); see also Exhibit 2a.

<sup>6</sup> See Exhibit 2d.

regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.<sup>7</sup> In response to the pandemic, many private and government employers closed their offices and their employees continued with their work from alternative locations such as private residences. FINRA believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. Moreover, the technology advancements that facilitated the transition to working outside the conventional office setting on a broad scale has not only effected a profound change in lifestyle and workplace practices for member firms, but provided FINRA an opportunity to consider aspects of Rule 3110 that may benefit from modernization.<sup>8</sup> As such,

<sup>7</sup> Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. See *Regulatory Notice* 20-08 (March 2020) ("Notice 20-08"). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. 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). In response to the ongoing public health crisis, FINRA subsequently adopted temporary FINRA Rule 3110.17, providing member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms therein. 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). Currently, FINRA Rule 3110.17 expires on December 31, 2023. 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).

<sup>8</sup> In general, FINRA has had a longstanding practice of periodically reviewing its rules to ensure that they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes. See generally *Special Notices to Members* 01-35 (May 2001) ("Notice 01-35") (requesting comment on steps that can be taken to streamline FINRA (then NASD) rules) and 02-10 (January 2002) ("Notice 02-10") (requesting information on steps that can be taken to streamline FINRA (then NASD) rules). See also *Regulatory Notice* 14-14 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA's communications with the public rules) and

FINRA believes measured changes to its regulatory approach would allow firms to effectively and more efficiently carry out their supervisory responsibilities to review the activities of each office or location while preserving investor protections.

#### i. Rule Filing History

In the 2022 RSL Rule Filing, FINRA had proposed establishing a new non-branch location—the Residential Supervisory Location—that would be subject to a host of safeguards and conditions derived from the existing exclusions to the branch office definition under Rule 3110(f)(2)(A). The SEC twice published the 2022 RSL Rule Filing for comment, which elicited responses from many individuals, broker-dealers, and trade organizations and other associations, including the North American Securities Administrators Association, Inc. ("NASAA") and the Public Investors Advocate Bar Association ("PIABA").<sup>9</sup> FINRA submitted two letters responding to the comments received by the SEC but did not amend the filing.<sup>10</sup>

All commenters supported the overall intent of the 2022 RSL Rule Filing to allow greater flexibility based on the risks presented, except for NASAA and PIABA. Many commenters expressed strong support for FINRA's willingness to evolve its longstanding branch office definition under Rule 3110(f)(2)(A) based on lessons learned during the COVID-19 pandemic and evolving technology and workforce arrangements. A fundamental concern from NASAA and PIABA, however, pertained more generally to firms' ability to supervise associated persons who work from remote offices or locations, a permissible arrangement under specified circumstances that predated the pandemic. In particular, NASAA expressed general concern about "reducing firms' longstanding supervisory obligations[.]"<sup>11</sup> Among others, the comments sought to adjust the terms of some of the safeguards and conditions relating to books and records; create a more formalized system to help firms identify and track

*Regulatory Notice* 14-15 (April 2014) (requesting comment on the effectiveness and efficiency of FINRA's gifts, gratuities and non-cash compensation rules), both launching FINRA's Retrospective Rule Review Program.

<sup>9</sup> See Submitted Comments to 2022 RSL Rule Filing, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019.htm>.

<sup>10</sup> See Exhibits 2b and 2c.

<sup>11</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022, ("NASAA II") <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

their residential supervisory locations; and broaden the ineligibility criteria, such as the one relating to an associated person's specified regulatory or disciplinary events to encompass any state law pertaining to securities regulation. March 30, 2023 is the date by which the SEC is required to either approve or disapprove the 2022 RSL Rule Filing. However, on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC in order to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters.

#### ii. Key Changes to Current Proposal

While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, as described further below, this proposal makes key adjustments that take into account the concerns expressed by commenters in the following areas by:

(1) enhancing the conditions for RSL designation relating to books and records to provide, among things, that records are not physically or electronically maintained and preserved at the location;

(2) expanding the list of criteria that would make a firm ineligible to rely on proposed Rule 3110.19 to include, among other things, a member firm that has been suspended or a firm that has been a FINRA member for less than 12 months;

(3) adjusting the ineligibility criterion that would make an office or location ineligible to rely on proposed Rule 3110.19 where an associated person is the subject of an investigation or other action relating to a failure to supervise; and

(4) requiring firms to provide, on a quarterly basis, a current list to FINRA of all locations designated as RSLs.

#### iii. Impact on Diversity, Equity and Inclusion (“DEI”) Efforts

Firms have noted that the flexibility hybrid work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>12</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing as well.<sup>13</sup> For example, several firms stated that the move to a hybrid approach for the industry has also allowed them to hire broadly across the entire country instead of localized markets, which profoundly impacts and strengthens a

firm's diversity and inclusion hiring efforts.<sup>14</sup> Having the ability to offer workplace flexibility is key to maintaining employee engagement and retention; otherwise, workers with transferrable skills are likely to seek positions in other industries that allow for remote or hybrid work. Similarly, one group of commenters, composed mostly of small member firms, stated that “[t]he expectations of a modern-day workforce have rapidly evolved from decades old status quo into a modern Work From Anywhere (WFA), DEI-enhancing era. Major online job posting portals now have a filter specifically for ‘Remote/Work from Home’.” (citation omitted).<sup>15</sup> Notably, a report from the U.S. Government Accountability Office highlighted that data from the Equal Employment Opportunity Commission for the period 2018–2020 that showed both minorities and women in management positions in the financial services industry remained underrepresented with Black and Hispanic representation at about 3% and 4%, respectively, and female representation at 32% in that period.<sup>16</sup> In proposing to adopt Rule 3110.19, FINRA believes that reducing barriers to entry that may be part of the current regulatory framework can be achieved while continuing to preserve investor protection.

#### iv. Renewal of Proposed Rule Change To Adopt Proposed Rule 3110.19

FINRA reaffirms its belief that the current environment merits a reevaluation of the regulatory benefit of requiring firms to designate a private residence, at which specified supervisory functions occur, as an OSJ or branch office. In recognition of the significant technology and industry changes that have enhanced the efficiencies of day-to-day supervision of associated persons and impacted workplace arrangements, FINRA is renewing its proposal to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location that would be treated as a non-branch location (*i.e.*, an unregistered office), subject to specified

investor protection safeguards and limitations. The most significant regulatory effect of the proposed rule change would be that, as a non-branch location, a Residential Supervisory Location would become subject to inspections on a regular periodic schedule, which is presumed to be at least every three years, rather than an annual inspection requirement required of OSJs and other supervisory branch offices.<sup>17</sup>

#### v. Evolution of OSJ and Branch Office Definitions

FINRA has periodically assessed the manner in which firms may effectively and efficiently carry out their supervisory responsibilities considering evolving business models and practices, advances in technology, and regulatory benefits. As detailed below, since the late 1980s, the OSJ and branch office definitions have undergone several revisions to address regulatory need and efficiency (*e.g.*, rule alignment with other regulators, access to more robust information), evolving with technological and industry changes while also remaining focused on promoting investor protection.

Under FINRA's (then NASD's) Rules of Fair Practice,<sup>18</sup> an OSJ was defined as “any office designated as directly responsible for the review of the activities of registered representatives or associated persons in such office and/or any other offices of the member[,]” and a branch office was one that was “owned or controlled by a member, and which is engaged in the investment banking or securities business.”<sup>19</sup> Further, a place of business of a member firm's associated person was considered a branch office if the member: “directly or indirectly contributes a substantial portion of the operating expenses of any place used by a person associated with a member who is engaged in the investment banking or securities business, whether it be commercial office space or a residence. Operating expenses, for purposes of this standard, shall include items normally associated with the cost of operating the business such as rent and taxes.”<sup>20</sup> In addition, such location was a branch office if the member “authorizes a listing in any

<sup>14</sup> See Exhibit 2b.

<sup>15</sup> See Letter from Jennifer L. Szaro, Chief Compliance Officer, XML Securities, LLC, et al. (collectively referred to as the “Group of 16”), to Vanessa A. Countryman, Secretary, SEC, dated October 25, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20147525-313736.pdf>.

<sup>16</sup> See U.S. Government Accountability Office, Financial Services Industry, Overview of Representation of Minorities and Women and Practices to Promote Diversity (GAO–23–106427) (December 2022), [www.gao.gov/assets/gao-23-106427.pdf](http://www.gao.gov/assets/gao-23-106427.pdf).

<sup>17</sup> See note 3, *supra*.

<sup>18</sup> Then NASD adopted Rules of Fair Practice when it was founded in 1939 under provisions of the 1938 Maloney Act amendments to the Exchange Act.

<sup>19</sup> See *Notice to Members 87–41* (June 1987) (“*Notice 87–41*”) (setting forth the proposed rule text changes to Article III, Section 27 of the NASD Rules of Fair Practice for the OSJ definition and Article I, Section (c) of the NASD By-Laws for the branch office definition, among other provisions).

<sup>20</sup> See *Notice 87–41*.

<sup>12</sup> See generally Submitted Comments to *Regulatory Notice 20–42* (December 2020) (“*Notice 20–42*”), <https://www.finra.org/rules-guidance/notices/20-42#comments>.

<sup>13</sup> See Exhibit 2b.

publication or any other media, including a professional dealer's digest or a telephone directory, which listing designates a place as an office or if the member designates a place as an office or if the member designates any such place with an organization as an office."<sup>21</sup> The term "branch office" was established "merely to designate and identify for registration purposes the various offices of a member other than the main office and as such [were] required to be registered and as to which a registration fee should be paid."<sup>22</sup>

Over the years, these terms have undergone several modifications, driven by changes in regulatory need and business models. In particular, the subsequent amendments focused on providing regulators robust information when conducting examinations that readily identified the appropriate individuals and records at a firm. In response to such changes, the OSJ and branch office definitions were refined and exemptions from branch office registration were added.

In 1988, as part of several supervisory enhancements, the OSJ and branch office definitions were significantly amended in response to general concerns about member firms' associated persons engaging in the offer and sale of securities to the public without adequate ongoing supervision and regular examination by member firms.<sup>23</sup> The amendments substantially expanded the specificity of FINRA Rule 3110 (formerly, Article III, Section 27 of the NASD Rules of Fair Practice) with respect to a member's supervisory obligations and the new standards focused on "the creation of a supervisory 'chain of command,' in which qualified supervisory personnel are appointed to carry out the firm's supervisory obligations[.]"<sup>24</sup> The newly amended OSJ definition focused on an office at which "the approval [of specified functions] that constitutes formal action by the member takes place."<sup>25</sup> The amendments also added

more prescriptive requirements with respect to OSJs such as requiring a firm to designate as an OSJ an office that meets the OSJ definition and any other location for which such designation would be appropriate; designate one or more registered principals in each OSJ; maintain written supervisory procedures describing the supervisory system implemented and listing the titles, registration status, and locations of the required supervisory personnel and the specific responsibilities associated with each; and keep and maintain the firm's supervisory procedures, or the relevant parts thereof, at each OSJ and at each other location where supervisory activities are conducted on behalf of the firm.<sup>26</sup>

With respect to the branch office definition, the amendments also refined it from any location "owned or controlled by a member, and which [was] engaged in the investment banking or securities business"<sup>27</sup> to "any business location held out to the public or customers by any means as a location at which the investment banking or securities business is conducted on behalf of the member, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the member responsible for supervising the activities of the identified location."<sup>28</sup>

These definitional amendments were intended to address concerns about the absence of on-site supervision by registered principals at a firm's business location.<sup>29</sup> The amendments required a "minimum supervisory structure that facilitate[d] closer supervision by principals with clear responsibilities."<sup>30</sup> In addition, the revisions required OSJ designation for "any office at which the approval that constitutes formal action by the member takes place."<sup>31</sup> Further, FINRA noted

private placements; (3) Maintaining custody of customers' funds and/or securities; (4) Final acceptance (approval) of new accounts on behalf of the member, (5) Review and endorsement of customer orders pursuant to the provisions of proposed Article III, Section 27(d); (6) Final approval of advertising or sales literature for use by persons associated with the member, pursuant to Article III, Section 35(b)(l) of the Rules of Fair Practice; or (7) Responsibility for supervising the activities of persons associated with the member at one or more other offices of the member." See Notice 88-84.

<sup>26</sup> See Notice 88-84. See generally Rule 3110(a) and (b).

<sup>27</sup> See Notice 87-41.

<sup>28</sup> See Notice 88-84.

<sup>29</sup> See Notice 87-41.

<sup>30</sup> See Notice 87-41.

<sup>31</sup> See Notice 88-11.

that the enhancements to the supervisory practices and definitions reflected its "continuing commitment to facilitate more effective supervision by members while accommodating their diverse modes of operation."<sup>32</sup> FINRA believes the definitional amendments brought focus to where final approval of certain functions was occurring so both the firm and regulators would be able to readily identify the principal who was designated to review a specific function and also where original books and records related to such supervision would be kept. At that time, books and records (e.g., account documents, communications, order tickets, trade blotters) were generally made and preserved in hard copy paper format, not electronically, and stored in files at such offices.

In 1992, FINRA further amended the branch office definition to allow additional locations that were not being held out to the public to be exempt from branch office registration.<sup>33</sup> FINRA noted that the exclusions were intended as a reasonable accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds.<sup>34</sup> In the approval order, the Commission recognized that the amended definition would eliminate the requirement to register as a branch office unless the securities activity at the office required "continuous and direct supervision of a principal, or the location is being held out to the public as a place where a full range of securities activity is being conducted. Having considered the proposal, the Commission believe[d] the rule change will assist [FINRA] members in meeting their obligation to supervise off-site registered representatives under applicable securities laws, regulations and [FINRA] rules."<sup>35</sup>

In 2001, FINRA launched an initiative to modernize its rules.<sup>36</sup> Based on input from member firms, FINRA identified the branch office definition as a rule that could benefit from modernization

<sup>32</sup> See Notice 88-11.

<sup>33</sup> In general, these amendments codified interpretations pertaining to the branch office definitions and their exclusions by clarifying that the address and telephone number of the appropriate OSJ or branch office must be provided in advertisements and sales literature, not the address of a non-branch location. See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>34</sup> See Notice to Members 92-18 (April 1992) (announcing SEC approval of File No. SR-NASD-91-42).

<sup>35</sup> See Securities Exchange Act Release No. 30509 (March 24, 1992), 57 FR 10936, 10937 (March 31, 1992) (Order Approving File No. SR-NASD-91-42).

<sup>36</sup> See Notice 01-35.

<sup>21</sup> See Notice 87-41.

<sup>22</sup> See Notice 87-41.

<sup>23</sup> See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31). See also Notice to Members 88-84 (November 1988) ("Notice 88-84") (announcing SEC approval of File No. SR-NASD-88-31).

<sup>24</sup> See Notice to Members 88-11 (February 1988) ("Notice 88-11") (requesting comments on proposed amendments to Article III, Section 27 of the NASD Rules of Fair Practice regarding supervision and the OSJ and branch office definitions).

<sup>25</sup> See Notice 88-11. Largely similar to current Rule 3110(f)(1)(A) through (G), the specified functions were: "(1) Order execution and/or market making; (2) Structuring of public offerings or

in light of the SEC's amendment to the term "office" in the SEC's Books and Records Rules,<sup>37</sup> the branch office definition used by the New York Stock Exchange ("NYSE") and state regulators, new business practices that were developing based on technological innovations, and the potential to create a uniform branch office registration system.<sup>38</sup> FINRA expressly noted that a factor to be considered in modernizing rules included instances "where the regulatory burden of a rule significantly outweigh[ed] the benefit, or the rule no longer work[ed] efficiently given new technologies."<sup>39</sup>

Until 2005, member firms were required to complete Schedule E to the Form BD ("Schedule E") to register or report branch offices to the SEC, FINRA, and the state in which they conducted a securities business that required branch office registration. While Schedule E captured certain data with respect to branch offices, it did not adequately fulfill the evolving needs of regulators. For example, Schedule E did not link an individual registered representative with a particular branch office, which made it more difficult for regulators to track the appropriate individuals for examinations.

As technology advanced and business models changed, FINRA continued its commitment to modernizing the rule while preserving investor protections. By 2005, this initiative led to the establishment of a national standard, a uniform definition of a branch office, that was the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the SEC, FINRA, the NYSE, NASAA, and state securities regulators to identify locations where broker-dealers conduct securities or investment banking business.<sup>40</sup> Moreover, the adoption of a uniform definition facilitated the development of a centralized branch office registration system through the Central Registration Depository and the creation of a uniform form to register or report branch offices electronically with multiple regulators.<sup>41</sup> With the launch of this new technology, firms and regulators could efficiently identify each branch location, which would be assigned a unique branch office number

by the system, the individuals assigned to such location, and the designated supervisor(s) for such location. This new centralized branch office registration system allowed firms and regulators to efficiently locate offices and individuals, and moreover closed gaps in information, created significant efficiencies and lessened the burden on firms and regulators.

At the time these definitional changes were underway, technology had progressed with the advent of faster internet, Wi-Fi, the emergence of web-based platforms, and more portable computers to enhance workplace connectivity that allowed for expanded remote work options. In recognition of the evolving and growing trend in the financial industry and workforce generally to work from home, the uniform branch office definition adopted numerous exclusions, including the current primary residence exclusion. The limitations on use of a primary residence closely tracks the limitations on the use of a private residence in the SEC's Books and Records Rules,<sup>42</sup> which provide that a broker-dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office. At the same time, FINRA adopted IM-3010-1 (Standards for Reasonable Review) (now Rule 3110.12 (Standards for Reasonable Review)), as a further safeguard.<sup>43</sup> That rule clarified the high standards firms must observe regarding supervisory obligations and emphasized the requirement that members already had to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things: the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.

During the almost two decades since the adoption of the uniform branch office definition and its related exclusions, regulators have utilized advancements in technology to support

their examinations and otherwise further investor protections, and firms have embraced and adopted numerous technologies to enhance their regulatory and compliance programs. The rapid explosion of new technologies in the last 20 years, and the widespread use such of technology (e.g., personal computers, email, mobile phones, electronic communication systems with audio and visual capabilities, cloud storage of books and records), and the ability to use risk-based surveillance and compliance tools and systems, have fundamentally altered the landscape of how the broker-dealer business is conducted.

These earlier amendments evidence the need to keep the regulatory framework current. FINRA believes that with evolving changes in business models and the significant advance of technological tools that are now readily available, some functions can be exempt from registration, subject to specified conditions, without compromising a reasonably designed supervisory system. Moreover, FINRA believes the proposed rule change to classify some private residences as non-branch locations, subject to specified controls, will not result in a loss of the important regulatory information that the rules were designed, in part, to provide regarding the locations or associated persons. That information will continue to be collected through our regulatory requirements and systems such as the branch office registration system and Form BR and other uniform registration forms.<sup>44</sup> Further, as a non-branch location, an RSL would be subject to an inspection on a regular periodic schedule which FINRA believes would still achieve the purpose of the inspection requirement; that is, to help firms assess whether their supervisory systems and procedures are being followed.<sup>45</sup>

<sup>44</sup> For example, under Form U4 (Uniform Application for Securities Industry Registration or Transfer), if an individual's "Office of Employment Address" is an unregistered location, the firm must report the address of such location as the individual's "located at" address and must report the branch office that supervises that non-registered location as the "supervised from" location. See Form U4, Section 1 (General Information). Similar to Form BR, Form U4 solicits information about an individual's other business activities. See Form U4, Section 13 (Other Business) and Form BR, Section 3 (Other Business Activities/Names/websites). Form BD (Uniform Application for Broker-Dealer Registration) captures the types of business in which a firm is engaged. See Form BD, Item 12; see also Form BR, Section 2 (Registration/Notice Filing Type of Office/Activities), Item D.

<sup>45</sup> See *Notice to Members 99-45* (June 1999) ("*Notice 99-45*").

<sup>37</sup> 17 CFR 240.17a-3 and 240.17a-4. See generally *Notice to Members 01-80* (December 2001) (describing amendments to the SEC Books and Records Rules).

<sup>38</sup> See *Notice 02-10*.

<sup>39</sup> See *Notice 01-35*.

<sup>40</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (Order Approving File No. SR-NASD-2003-104) ("Uniform Definition of Branch Office").

<sup>41</sup> See Form BR.

<sup>42</sup> See note 37, *supra*.

<sup>43</sup> See note 40, *supra*.

vi. Evolution of the Review and Inspection of Activities Occurring at Offices and Locations

Under FINRA's (then NASD's) Rules of Fair Practice, a member firm was required to "review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities and abuses and at least an annual inspection of each [OSJ]." <sup>46</sup> Alongside the supervisory enhancements that occurred in the 1980s, including the definitional changes described above, FINRA expanded the review requirement to include not only the activities of each office, but also the businesses in which a member firm engages. The expanded review requirement included a periodic examination of customer accounts to detect and prevent irregularities and abuses, an annual inspection of each OSJ, and inspection of branch offices in accordance with a regular schedule as set forth in the member's supervisory procedures. <sup>47</sup> As with the definitional changes, these enhancements were intended to address concerns about the adequacy of ongoing supervision and regular examination of associated persons engaged in the offer and sale of securities to the public at locations away from a member firm's office. <sup>48</sup>

FINRA guidance during this period, moreover, focused on the need for effective supervision of the securities-related activities of "off-site representatives," and advised firms that an inspection should include, among other things, a "review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature." <sup>49</sup> This guidance about the effective supervision of "off-site representatives" was pragmatic at a time when business activities were conducted primarily using paper documents <sup>50</sup> that were created and stored locally at an office or location; registered persons were interacting with their customers largely through in-person meetings, paper-based

correspondence transmitted through the postal service, and landline telephone calls; and supervisory personnel were conducting supervision through manual reviews of paper files (e.g., exception reports bearing a supervisor's handwritten comments and initials).

Today, supervisory functions such as approving new customer accounts, reviewing and endorsing customer orders and approving retail communications, in large part, occur through traceable digital channels. Based on FINRA's examination experience over decades, making and preserving records electronically have increasingly become the norm and the preferred recordkeeping medium rather than paper; communications between and among members, their associated persons and customers commonly take place through email, video or some other electronic means; and customer funds and securities are frequently and increasingly transmitted electronically rather than in physical form. In addition, firms have centralized many aspects of their supervisory, surveillance, compliance, and other control functions that facilitate ongoing, real-time monitoring and supervision of activities of dispersed offices and locations. Changes in business practices and work habits have evolved, but the pandemic experience has accelerated reliance on technological advances in surveillance and monitoring capabilities, and spurred significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. With these environmental changes, FINRA believes that there is an opportunity to create a regulatory framework in which member firms can capably continue to carry out their obligation to effectively inspect the supervisory activities taking place at an office or location, subject to the proposed controls, on a regular periodic schedule without diminishing investor protection.

vii. FINRA Rule 3110 and Current Requirements To Register and Inspect Offices

Rule 3110 requires a member firm, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and FINRA rules. The rule sets forth the minimum requirements of a member firm's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under Rule 3110(f) and inspecting all offices and locations in accordance with Rule 3110(c). The rule

categorizes offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location. <sup>51</sup> The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, the rule requires the registration and designation as an OSJ or branch office of each location, including the main office, that meets their respective definition under paragraphs (f)(1) and (f)(2) of Rule 3110, as described in more detail below. <sup>52</sup>

An OSJ is a type of branch office. Rule 3110(f)(2) defines a "branch office" as "any location where one or more associated persons of a member firm regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such[.]" <sup>53</sup> In addition, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is a branch office (*i.e.*, a supervisory branch office). <sup>54</sup> A location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection. <sup>55</sup>

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ, which Rule 3110(f)(1) defines as a member's business location at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders, pursuant to Rule 3110(b)(2); <sup>56</sup> (6) final

<sup>51</sup> See FINRA Rule 3110(c).

<sup>52</sup> See FINRA Rules 3110(a)(3) and 3110.01. Currently, firms are required to register each branch office and indicate, among other things, whether it is an OSJ, by filing Form BR. See Section 2 of Form BR, requiring the applicant to indicate whether an office is a "FINRA OSJ" or "non-OSJ branch," <https://www.finra.org/sites/default/files/AppSupportDoc/p465944.pdf>.

<sup>53</sup> See FINRA Rule 3110(f)(2)(A).

<sup>54</sup> See FINRA Rule 3110(f)(2)(B).

<sup>55</sup> See FINRA Rule 3110(a)(4), and FINRA Rule 3110(c)(1)(A) and (B).

<sup>56</sup> FINRA Rule 3110(b)(2) pertains to the review of a member's investment banking and securities business and provides that "[t]he supervisory procedures required by [Rule 3110(b) (Written Procedures)] shall include procedures for the review by a registered principal, evidenced in

<sup>46</sup> See note 19, *supra*, and accompanying text for the then existing OSJ definition.

<sup>47</sup> See Notice 88-84.

<sup>48</sup> See Notice 88-84.

<sup>49</sup> See Notice to Members 98-38 (May 1998) ("Notice 98-38") and Notice 99-45.

<sup>50</sup> Paper-based documents included, for example, customer account opening documents; correspondence with customers; marketing materials; communications from registered persons to the firm; order tickets; checks received and forwarded; and fund transmittal records.

approval of retail communications for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports;<sup>57</sup> or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member. An office designated as an OSJ must have an appropriately registered principal on-site at the location, and must be inspected at least annually.<sup>58</sup>

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Rule 3110(f)(2)(A) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.<sup>59</sup> One such exclusion appears under Rule 3110(f)(2)(A)(ii) and exempts from registration as a branch office an associated person’s primary residence subject to the following express conditions: (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 and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such

writing, of all transactions relating to the investment banking or securities business of the member.”

<sup>57</sup> In general, with some exceptions, paragraph (b)(1) of Rule 2210 (Communications with the Public) requires that an appropriately qualified registered principal approve each retail communication prior to use or filing with FINRA.

<sup>58</sup> See FINRA Rules 3110(a)(4) and 3110(c)(1)(A).

<sup>59</sup> See generally FINRA Rule 3110(f)(2)(A) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with the Rule; (6) electronic communications (e.g., email) are made through the member’s electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and (9) a list of the residence locations is maintained by the member (“primary residence exclusion”).<sup>60</sup> The second exclusion that pertains to a residential location appears under Rule 3110(f)(2)(A)(iii) and is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the member complies with the conditions described in (1) through (8) above (“non-primary residence exclusion”). In general, the non-primary residence exclusion typically refers to a vacation or second home.<sup>61</sup> A non-branch location must be inspected on a periodic schedule, presumed to be at least every three years.<sup>62</sup>

Notwithstanding either of these two residential exclusions or the other exclusions listed under Rule 3110(f)(2)(A),<sup>63</sup> a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered an OSJ or (supervisory) branch office, respectively.<sup>64</sup> Consequently, such residential supervisory offices are subject to registration, an annual inspection and, in some cases, additional licensing requirements.<sup>65</sup>

As noted above, the branch office definition and its exclusions, including the conditions for the primary residence and non-primary residence exclusions, is a uniform definition FINRA developed in coordination with the

<sup>60</sup> See FINRA Rule 3110(f)(2)(ii) a. through i.

<sup>61</sup> See *Notice to Members 06–12* (March 2006) (“*Notice 06–12*”).

<sup>62</sup> See note 3, *supra*.

<sup>63</sup> See note 59, *supra*.

<sup>64</sup> See FINRA Rule 3110(f)(1)(D) through (G) and FINRA Rule 3110(f)(2)(B).

<sup>65</sup> See note 58, *supra*.

NYSE and other self-regulatory organizations (“SROs”), and state securities regulators, and it has been in place since 2005 (collectively, the “uniform branch office definition”).<sup>66</sup> The codification of the seven exclusions from registration in the uniform branch office definition recognized both practical situations and advances in technology used to conduct and monitor business, the evolving nature of business models, and changing lifestyle and work practices while also preserving investor protection through specified safeguards and limitations such as those appearing in the primary residence exclusion.<sup>67</sup> In the approval order for the uniform branch office definition, the Commission noted that the limitations for the primary residence exclusion “closely track the limitations on the use of a private residence in the Books and Records Rules.”<sup>68</sup> The Commission also stated that the seven exclusions “recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors.”<sup>69</sup> Further, the Commission stated that “[g]iven the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for [FINRA] to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer

<sup>66</sup> See note 40, *supra*.

<sup>67</sup> See generally *Notice to Members 05–67* (October 2005).

<sup>68</sup> See Uniform Definition of Branch Office, *supra* note 40, 70 FR 54782, 54783 (citation omitted).

<sup>69</sup> See Uniform Definition of Branch Office, *supra* note 40, 70 FR 54782, 54787. See also Securities Exchange Act Release No. 52402 (September 9, 2005), 70 FR 54788, 54795 (September 16, 2005) (Order Approving File No. SR–NYSE–2002–34) (stating, “the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office.”).

members.”<sup>70</sup> Finally, the Commission expressed the view that the uniform branch office definition “strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.”<sup>71</sup> FINRA believes that the Commission’s statements about advances in technology and evolving workplace conventions, and the safeguards and limitations of the primary residence exclusion are apt for this proposed rule change as well.

#### viii. Impact of Technology on Supervision and New Workplace Conventions

In response to the public health crisis, FINRA requested comment regarding pandemic-related issues and questions, including the comment process in connection with the temporary amendments to Rule 3110,<sup>72</sup> and discussions with FINRA’s advisory committees and other industry representatives. Firms responded that they relied extensively on technology to support their effective transition to the remote work environment and enhance the supervision of geographically dispersed associated persons, many of whom have been working from home since early 2020 and may continue to do so in some manner in the current environment.<sup>73</sup> These technological tools facilitating their supervisory practices include surveillance systems, electronic tracking programs or applications, and electronic communications, including video conferencing tools.<sup>74</sup> Commenters that

responded to the 2022 RSL Rule Filing conveyed the general view that technology has facilitated remote supervision, with some commenters describing the technology used to effectively supervise associated persons.<sup>75</sup> The examples cited included the use of information barriers to safeguard and restrict the flow of confidential and material, non-public information; technology barriers to restrict and control employee access to systems and databases; internal email blocks; internet and social media reviews for evidence of outside business activities or private securities transactions; programs or operating systems to enable firms to conduct computer desktop reviews from another location; web-based communication platforms to communicate with registered persons; video conferencing technology; a centralized repository to retain electronic communications; and software (e.g., DocuSign) to enable customers to digitally sign contracts and other documents such as client attestations and new account documents.<sup>76</sup> In addition, some firms have further noted that the flexibility hybrid work offers has made a positive impact in attracting more diverse talent, and retaining existing talent.<sup>77</sup> These views are consistent with those expressed by several commenters in response to the 2022 RSL Rule Filing.<sup>78</sup>

Similar to the changed environment underlying the Commission’s approval order of the uniform branch office definition that codified the existing seven exclusions, FINRA believes that the structural and lifestyle changes for member firms and their workforce catalyzed by the pandemic—along with advances in technology—merit reevaluation of some aspects of the branch office registration and inspection requirements. Specifically, FINRA believes the regulatory benefit of requiring firms to designate a private residence, at which supervisory functions occur, as an OSJ or branch office (*i.e.*, supervisory branch office), subject to an annual inspection schedule, should now be reconsidered where the risk profile of these offices can be effectively controlled through practically based safeguards and limitations.

FINRA is therefore proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential

Supervisory Location as a non-branch location, subject to specified safeguards and limitations. This proposed new non-branch location would target the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

#### b. Proposed Residential Supervisory Location as a Non-Branch Location

The proposed definition of an RSL would be based largely on several existing aspects of Rule 3110(f). In particular, FINRA is proposing to incorporate the existing supervisory functions appearing in the OSJ definition (Rule 3110(f)(1)) and branch office definition (Rule 3110(f)(2)(B)) with the existing residential exclusions set forth in the branch office definition to classify a Residential Supervisory Location as a non-branch location. Currently, a private residence at which these supervisory functions occur must be registered and designated as a branch office or OSJ under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.<sup>79</sup>

Proposed Rule 3110.19 would incorporate some existing safeguards and limitations firms must already satisfy to rely on the primary residence exclusion<sup>80</sup> as FINRA believes that several of these conditions are also appropriate for the proposed Residential Supervisory Location. FINRA intends for the terms underlying the proposed Residential Supervisory Location to be interpreted consistently with their meaning in Rule 3110(f) and existing related guidance.<sup>81</sup> In addition, FINRA is proposing to further augment the conditions for RSL designation and the criteria that would make a firm ineligible to rely on proposed Rule 3110.19 if unmet.

#### i. Conditions for Designation as a Residential Supervisory Location (Proposed Rule 3110.19(a))

As described above, FINRA is proposing to adopt Rule 3110.19 to establish a Residential Supervisory Location as a new non-branch location, but subject to specified conditions, most of which are derived from those

<sup>70</sup> See Uniform Definition of Branch Office, *supra* note 40, 70 FR 54782, 54787.

<sup>71</sup> See note 69, *supra*.

<sup>72</sup> See, e.g., Submitted Comments to 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), <https://www.sec.gov/comments/sr-finra-2022-001/srfinra2022001.htm>; and Submitted Comments to 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), <https://www.sec.gov/comments/sr-finra-2020-019/srfinra2020019.htm>.

<sup>73</sup> See generally *Regulatory Notice 21-44* (December 2021).

<sup>74</sup> See generally *Regulatory Notice 20-16* (May 2020); see also FINRA White Paper, *Technology Based Innovations for Regulatory Compliance (“RegTech”)* in the Securities Industry (September 2018) (reporting, among other things, that as financial services firms seek to keep pace with regulatory compliance requirements, they are turning to new and innovative regulatory tools to assist them in meeting their obligations in an

effective and efficient manner), [https://www.finra.org/sites/default/files/2018\\_RegTech\\_Report.pdf](https://www.finra.org/sites/default/files/2018_RegTech_Report.pdf).

<sup>75</sup> See Exhibit 2b.

<sup>76</sup> See Exhibit 2b.

<sup>77</sup> See generally note 12, *supra*.

<sup>78</sup> See Exhibit 2b.

<sup>79</sup> See note 3, *supra*.

<sup>80</sup> See Rule 3110(f)(2)(A)(ii)a, b, c, d, e, f, and i.

<sup>81</sup> See, e.g., *Notice 06-12*.



currently required for the primary residence and non-primary residence exclusions. While many of the proposed conditions are similar to those FINRA had proposed in the 2022 RSL Rule Filing, this proposed rule change adjusts the conditions for RSL designation in two key areas. Specifically, this proposed rule change would add conditions pertaining to (1) books and records to include, among other things, clarifying language about a firm's recordkeeping system and (2) a firm's surveillance and technology tools to provide, among other things, that the tools are appropriate to supervise the risks presented by each RSL.

#### A. Conditions Derived Largely From Rule 3110 To Remain Substantively Unchanged From the 2022 RSL Rule Filing

In the 2022 RSL Rule Filing, FINRA has proposed several conditions for RSL designation that were based on those used for the existing residential exclusions to the branch office definition. Through this proposed rule change, FINRA is proposing to retain those terms subject to some technical adjustments that would align the proposed rule text more closely to the rule text appearing in Rule 3110(f)(2)(A)(ii).

Under proposed Rule 3110.19(a), any such 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 (proposed Rule 3110.19(a)(1));<sup>82</sup> (2) the location is not held out to the public as an office (proposed Rule 3110.19(a)(2));<sup>83</sup> (3) the associated person does not meet with customers or prospective customers at the location (proposed Rule 3110.19(a)(3));<sup>84</sup> (4) no sales activity takes place at the location other than as permitted and subject to the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii) (proposed Rule 3110.19(a)(4));<sup>85</sup> (5) neither customer funds nor securities are handled at that

location (proposed Rule 3110.19(a)(5));<sup>86</sup> (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person (proposed Rule 3110.19(a)(6));<sup>87</sup> (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110 (proposed Rule 3110.19(a)(7));<sup>88</sup> and (8) the associated person's electronic communications (e.g., email) are made through the member's electronic system (proposed Rule 3110.19(a)(8)).<sup>89</sup>

#### B. Conditions Adjusted From the 2022 RSL Rule Filing

##### 1. Books and Records (Proposed Rule 3110.19(a)(9))

In the 2022 RSL Rule Filing, FINRA had proposed requiring that 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. FINRA is proposing a clarifying adjustment to the language to provide that: (1) the member must have a recordkeeping system to make and keep current, and preserve records required to be made, and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; (2) such records are not physically or electronically maintained and preserved at the location; and (3) the member has prompt access to such records.

##### 2. Surveillance and Technology Tools (Proposed Rule 3110.19(a)(10))

To further enhance the proposed conditions for RSL designation, FINRA is proposing to include the requirement that a firm must determine that its surveillance and technology tools are appropriate to supervise its RSLs. FINRA believes that specifying baseline expectations with respect to the

surveillance and technology tools a firm must have in order to supervise its RSLs would promote investor protection.

FINRA believes that these proposed 10 conditions would strengthen a firm's ability to monitor the supervisory activities occurring at a Residential Supervisory Location and act to lower the overall risks associated with such location because, for example, the books and records required to be made and preserved by the member under the federal securities laws or FINRA rules cannot be physically or electronically maintained and preserved at the location. Moreover, FINRA notes that sales activities would be permissible at a Residential Supervisory Location to the same extent sales activities are permitted currently under such exclusions. As previously noted, the conditions for the current primary and non-primary residence exclusions, which align with the SEC's Books and Records Rules, were developed in coordination with other SROs and state securities regulators and such exclusions have been in place since 2005.<sup>90</sup> As such, firms have developed experience with monitoring and supervising these conditions, and FINRA believes member firms will be able to rely on such experience to reasonably supervise similar conditions for proposed Residential Supervisory Locations. As with any non-branch location, a Residential Supervisory Location would be subject to an inspection on a periodic schedule, presumed to be at least every three years.<sup>91</sup>

##### iv. Member Firm Ineligibility Criteria (Proposed Rule 3110.19(b))

FINRA is further proposing several criteria a member firm must meet before it would be eligible to designate an office or location as a Residential Supervisory Location in accordance with proposed Rule 3110.19. As described further below, the proposed seven ineligibility criteria reflect attributes of a member firm that FINRA believes are more likely to raise investor protection concerns based on FINRA rules. Consistent with the 2022 RSL Rule Filing, proposed Rule 3110.19(b) would provide that a location would be ineligible for designation as a Residential Supervisory Location in accordance with Rule 3110.19 if: (1) the member is currently designated as a "Restricted Firm" under Rule 4111 (Restricted Firm Obligations)<sup>92</sup>

<sup>82</sup> See Rule 3110(f)(2)(A)(ii)a. ("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[.]").

<sup>83</sup> See Rule 3110(f)(2)(A)(ii)b. ("The location is not held out to the public as an office and the associated persons does not meet with customers at the location[.]").

<sup>84</sup> See note 83, *supra*.

<sup>85</sup> An associated person's private residence, other than a primary residence, remains subject to the less than 30-business-day in any calendar year limitation on use for securities business.

<sup>86</sup> See Rule 3110(f)(2)(A)(ii)c. ("Neither customer funds nor securities are handled at the location[.]").

<sup>87</sup> See Rule 3110(f)(2)(A)(ii)d. ("The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person[.]").

<sup>88</sup> See Rule 3110(f)(2)(A)(ii)e. ("The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with this Rule[.]").

<sup>89</sup> See Rule 3110(f)(2)(A)(ii)f. ("Electronic communications (e.g., email) are made through the member's electronic system[.]").

<sup>90</sup> 17 CFR 240.17a-4(l); see also note 40, *supra*.

<sup>91</sup> See note 3, *supra*.

<sup>92</sup> In general, Rule 4111 requires member firms that are identified as "Restricted Firms" to deposit

(proposed Rule 3110.19(b)(1)); (2) the member is currently designated as a “Taping Firm” under Rule 3170 (Tape Recording of Registered Persons by Certain Firms)<sup>93</sup> (proposed Rule 3110.19(b)(2)); 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<sup>94</sup> (proposed Rule 3110.19(b)(3)).<sup>95</sup> Through this proposed rule change, FINRA is proposing to supplement these criteria to include a member firm: (1) that receives a notice from FINRA pursuant to Rule 9557 (Procedures for Regulating Activities under Rule 4110 (Capital Compliance), Rule 4120 (Regulatory Notification and Business Curtailment) or Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)), unless FINRA has otherwise permitted activities in writing pursuant to such rule (proposed Rule 3110.19(b)(4)); (2) is or becomes suspended by FINRA (proposed Rule 3110.19(b)(5)); (3) based on the date in CRD, had its FINRA membership become effective within the prior 12 months (proposed Rule 3110.19(b)(6)); or (4) is or has been found within the past three years by the SEC or FINRA to

cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. *See generally Regulatory Notice 21–34* (September 2021) (announcing FINRA’s adoption of rules to address firms with a significant history of misconduct).

<sup>93</sup> In general, Rule 3170 requires a member firm to establish, enforce and maintain special written procedures supervising the telemarketing activities of all of its registered persons, including the tape recording of conversations, if the firm has hired more than a specified percentage of registered persons from firms that meet FINRA Rule 3170’s definition of “disciplined firm.” *See generally Regulatory Notice 14–10* (March 2014) (announcing FINRA’s adoption of consolidated rules governing supervision).

<sup>94</sup> Rule 1017(a)(7) requires a member firm to file an application for continuing membership when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more defined “final criminal matters” or two or more “specified risk events” unless the member firm has submitted a written request to FINRA seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) applies whether the person is seeking to become an owner, control person, principal or registered person at the person’s current member firm or at a new member firm. *See generally Regulatory Notice 21–09* (March 2021) (announcing FINRA’s adoption of rules to address brokers with a significant history of misconduct).

<sup>95</sup> In the 2022 RSL Rule Filing, FINRA had categorized these criteria as “ineligible locations,” but through this proposed rule change, FINRA is proposing to categorize these terms as “member firm ineligibility criteria.” *See* proposed Rule 3110.19(c).

have violated Rule 3110(c) (proposed Rule 3110.19(b)(7)).

FINRA believes that a member firm that is experiencing issues complying with its capital requirements or that has been suspended by FINRA is more likely to face significant operational challenges that may negatively impact the firm’s overall supervision of its associated persons. FINRA further believes that a firm that has been a FINRA member for less than 12 months is often still implementing its business plan and developing a supervisory system appropriate tailored to the firm’s specific attributes and structure. With respect to a firm that is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c), FINRA believes such a firm has demonstrated challenges in developing or maintaining a robust inspection program. As such, FINRA believes that these proposed ineligibility criteria appropriately account for firms that pose higher risks, and for that reason, would be ineligible to rely on proposed Rule 3110.19.

#### v. Location Ineligibility Criteria (Proposed Rule 3110.19(c))

In the 2022 RSL Rule Filing, FINRA had proposed several criteria applicable to an associated person that if unmet, would make the location of the associated person ineligible for RSL designation. All but one of the terms of proposed Rule 3110.19(c) remain substantively unchanged from those FINRA had proposed in the 2022 RSL Rule Filing. As described below, FINRA is proposing to make a clarifying adjustment to a criterion applicable to a firm’s associated persons.

Under proposed Rule 3110.19(c), a location would be ineligible for designation as a Residential Supervisory Location where: (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 (proposed Rule 3110.19(c)(1)); (2) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04<sup>96</sup> (proposed Rule 3110.19(c)(2)); (3) one or more

<sup>96</sup> In general, Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) imposes an experience requirement (18 months of experience within the preceding five-year period) on those registered representatives who are designated by their firms to function in a principal capacity for a fixed 120-day period before having passed an appropriate principal qualification examination. *See generally Regulatory Notice 17–30* (October 2017) (announcing FINRA’s adoption of consolidated rules governing qualification and registration).

associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency (proposed Rule 3110.19(c)(3)); (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 (c)(3) of this proposed Supplementary Material or otherwise as a condition to approval or permission for such association (proposed Rule 3110.19(c)(4)); (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>97</sup> (proposed Rule 3110.19(c)(5)). These proposed criteria remain substantively unchanged from the 2022 RSL Rule Filing.

In addition to the proposed criteria above, an office or location would be ineligible for designation as a Residential Supervisory Location at which one or more associated persons at such 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 SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the Municipal Securities Rulemaking Board or FINRA (proposed Rule 3110.19(c)(6)).<sup>98</sup> This proposed criterion, which is similar to the one FINRA had proposed in the 2022 RSL Rule Filing, is a product of integrating aspects of several “Regulatory Action Disclosure” questions from Form U4

<sup>97</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.

<sup>98</sup> *See* Form U4, Questions 14C(6)–(8) and 14E(5)–(7) (referencing the Securities Act of 1933, the Securities Exchange Act of 1934, 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, and the rules of the Municipal Securities Rulemaking Board).

into a single provision.<sup>99</sup> In addition, as adjusted, this proposed criterion is responsive to NASAA's comment to the 2022 RSL Filing, which recommended broadening the scope of the criterion to include any state laws pertaining to securities regulation, noting that "state regulators investigate and bring actions for violations of state securities laws[.]"<sup>100</sup> and further noted that "state securities actions typically allege violations of state securities laws and regulations, even if the same conduct could also be a violation of federal securities laws or SRO rules."<sup>101</sup> FINRA had declined to include the reference to state securities laws in order to remain aligned with the provisions listed in Form U4.<sup>102</sup> But after further consideration, FINRA is proposing to incorporate NASAA's recommendation to include a reference to "any state law pertaining to the regulation of securities" within the list of provisions under proposed Rule 3110.19(c)(6) to account for state regulators. FINRA is also proposing to add a reference to FINRA rules. While this proposed adjustment would address NASAA's recommendation, FINRA notes that Form U4 does not have a specific question that elicits information regarding notice of an investigation or other action for a failure to supervise under state laws or FINRA rules and as such, proposed Rule 3110.19(c)(6) would require further information to monitor. A firm would need to be prepared to provide regulators information related to this proposed criterion upon request.

FINRA believes that these proposed six ineligibility criteria applicable to a firm's associated persons reflect the appropriate limitations on the private residences that can be designated as a Residential Supervisory Location. In particular, FINRA believes that an associated person designated at such location should have more than one

year of supervisory experience with the member and have passed the appropriate principal level qualification examination before the associated person's private residence can be treated as a non-branch location under proposed Rule 3110.19(a). While it is possible that an associated person may have prior supervisory experience from another firm, a new supervisor at the current member firm may need time to become knowledgeable about that firm's systems, people, products, and overall compliance culture. In addition, FINRA believes that the specified disclosures on Form U4 pertaining to criminal convictions and final regulatory action and the imposition of a mandatory heightened supervisory plan are indicia of increased risk to investors at some firms and locations such that they should not be treated as a non-branch location under the proposed supplementary material.<sup>103</sup>

vi. Obligation To Provide List of RSLs to FINRA (Proposed Rule 3110.19(d))

In the 2022 RSL Rule Filing, FINRA had proposed requiring a firm to maintain a list of residence locations in similar fashion as the existing requirement under Rule 3110(f)(2)(A)(ii).<sup>104</sup> Two commenters to the 2022 RSL Rule Filing shared their views on this proposed condition.<sup>105</sup> In general, their views pertained to the reliability or completeness of such a list, and the creation of a more formal categorization or appropriate system change so firms can identify and track RSLs in the Central Registration Depository ("CRD®").<sup>106</sup> In further

consideration of the comments, FINRA is proposing to require the member to provide FINRA with a list of the residence locations by the 15th day of the month following the calendar quarter through an electronic process or such other process as FINRA may prescribe. FINRA notes that CRD currently provides regulators with information regarding the offices and locations (registered and unregistered) to which associated persons required to be registered are assigned,<sup>107</sup> but requiring member firms to affirmatively provide this information to FINRA through a scheduled process would make this information more readily accessible to regulators.<sup>108</sup>

Proposed Rule 3110.19 would not be available to a member firm or private residence that meets any of the ineligibility criteria in proposed paragraphs (b) or (c), respectively, under Rule 3110.19 even with the safeguards and limitations listed in proposed Rule 3110.19(a). A member firm would be required to designate such private residence as an OSJ or branch office, as applicable, unless the location otherwise meets a branch office exclusion under Rule 3110(f)(2)(A). FINRA believes the proposed ineligibility criteria are appropriately derived from existing rule-based criteria that already have a process to identify firms that may pose greater concern (e.g., Rules 4111 and 3170) or to identify associated persons that may pose greater concerns as supervisors due to the nature of disclosures of regulatory or disciplinary events on the uniform registration forms or where the firm has not yet had the opportunity to gauge such person's effectiveness as a supervisor due to their limited supervisory experience with the member firm. FINRA believes that these objective categorical restrictions strike the correct balance and are sensible and consistent with a reasonably designed supervisory system while still preserving investor protections.

FINRA acknowledges the shift towards a permanent blended or hybrid

regulators and broker-dealer firms. The information maintained in the CRD system is reported by registered broker-dealer firms, associated persons and regulatory authorities in response to questions on specified uniform registration forms. See generally Rule 8312 (FINRA BrokerCheck Disclosure).

<sup>107</sup> FINRA notes that firms are under a continuing obligation to promptly update, among other things, their uniform forms whenever the information becomes inaccurate or incomplete. Amendments must be filed electronically (unless the filer is an approved paper filer) by promptly updating the appropriate section of such forms. See, e.g., general instructions to Form U4 and Form BR.

<sup>108</sup> FINRA is exploring ways to provide this information to state regulators in a practical format.

<sup>99</sup> See note 97, *supra*; see also Form U4 Question 14G, which provides: "Have you been notified, in writing, that you are now the subject of any: (1) regulatory complaint or proceeding that could result in a "yes" answer to any part of 14C, D or E? (If "yes", complete the Regulatory Action Disclosure Reporting Page.); (2) investigation that could result in a "yes" answer to any part of 14A, B, C, D or E? (If "yes", complete the Investigation Disclosure Reporting Page.)"

<sup>100</sup> See Letter from Melanie Senter Lubin, President, NASAA, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated August 23, 2022 ("NASAA I"), <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20137298-307861.pdf>.

<sup>101</sup> See Letter from Andrew Hartnett, President, NASAA, to J. Lynn Taylor, Assistant Secretary, SEC, dated November 25, 2022 ("NASAA II"), <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20151667-320142.pdf>.

<sup>102</sup> See note 98, *supra*.

<sup>103</sup> In response to the 2022 RSL Rule Filing, one commenter recommended that a location should be precluded from being designated as an RSL where a firm has implemented its own heightened supervisory plan, suggesting that this additional layer of supervision upon an associated person would warrant an automatic exclusion of such person's private residence as an RSL. In its second letter responding to comments directed to the 2022 RSL Rule Filing, FINRA indicated that a firm's routine evaluation of its supervisory system to ensure it is appropriately tailored to the firm's business may prompt a firm, out of an abundance of caution and independent of specific regulatory requirements or mandates, to undertake additional supervisory measures, including voluntarily imposing a heightened supervisory plan. See Exhibit 2c. FINRA further notes that a "voluntary heightened supervisory plan" is undefined and thus, a firm's view of "heightened supervision" could differ from that of a regulator. For example, a firm could voluntarily implement "heightened supervision" to review with more frequency the trade blotters of a registered person because the blotters relate to a new product of the firm.

<sup>104</sup> See Rule 3110(f)(2)(A)(ii). ("A list of the residence locations is maintained by the member[.]" )

<sup>105</sup> See Exhibits 2a and 2b.

<sup>106</sup> CRD is the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other SROs, state securities

workforce model and therefore believes under the current environment, private residences responsible for the supervisory activities and subject to the safeguards and conditions, and the ineligibility criteria described above should not require registration as branch offices, and calibrating the proposed Residential Supervisory Location to a regular periodic inspection schedule is appropriately tailored to the lower risk profile. FINRA notes that as part of efforts between FINRA and the NYSE to align the interpretations of the uniform branch office definition, FINRA made a definitional change to the OSJ definition to exclude from OSJ designation and treat as a non-branch location an office or location at which final approval of research reports occurred,<sup>109</sup> noting that “the limited nature of such activity [did] not necessitate supervision of such a location as an OSJ[.]”<sup>110</sup>

The proposed RSL designation is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised. Separate and apart from the classification of the office or location and the attendant inspection obligations, firms will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA emphasizes that member firms have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the FINRA By-Laws and rules.<sup>111</sup>

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>112</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 advances in compliance technology and evolving lifestyle and work practices, FINRA believes that the proposed rule change will reasonably account for evolving work models by excluding from branch office registration a Residential Supervisory Location at which lower risk activities occur, while retaining important investor protections with a set of safeguards and limitations derived largely from the primary residence exclusion. The proposed new non-branch location is intended to provide a practical and balanced way for firms to continue to effectively meet 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.

### 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.

#### 1. Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

##### a. Regulatory Need

As discussed above, in the wake of the pandemic, many member firms are developing hybrid workforce models for their employees. In these new ways of working, some employees may work permanently in an alternative location such as a private residence, other employees may spend some time in alternative locations and some time on-site in a conventional office setting, and some may work on-site full time.<sup>113</sup>

Absent the proposed rule change, when the temporary relief from the requirement to submit branch office applications on Form BR for new office locations ends, many member firms would need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. Either type of adjustment would create potentially significant costs. The proposed rule change would reduce, but not eliminate, the need for such adjustments since the activities conducted at some new residential locations would likely not meet the requirements of the proposed rule change.

##### b. Economic Baseline

The economic baseline includes both current and foreseeable workforce arrangements and business practices, including those that were first developed during the pandemic and have been modified since in light of reduced health and safety concerns. In particular, the economic baseline includes the innovations, and investments in communication and surveillance technology, that have supported and continue to support supervision in the remote work environment.<sup>114</sup> These innovations and investments have depended in part on the temporary suspension of the requirement to submit branch office applications on Form BR for new office locations, provided in *Notice 20–08*. However, in order to provide a full accounting of the likely effects of the proposed rule change, the analysis considers the impact of the proposed rule change under the assumption that, going forward, the temporary suspension of the above requirement is no longer in effect. The current supervisory requirements of Rule 3110 will then apply, including the provisions of Rule 3110 that categorize an OSJ, branch office and non-branch location and that establish the supervisory and registration requirements of each office or location.

*February 2023.pdf*. The SWAA is a monthly survey with respondents that are working-age persons in the United States that had earnings of at least \$10,000 in 2019. Further details about this survey can be found at <https://wfhresearch.com>.

<sup>114</sup> The pandemic propelled increased reliance on technology solutions in the remote work environment. A McKinsey survey in late 2020 found that, overall, firms had accelerated their adoption of technology, with large accelerations in the implementation of changes to increase remote working and collaboration, as well the use of advanced technologies in operations. See McKinsey & Company, *How COVID–19 has pushed companies over the technology tipping point—and transformed business forever*, October 5, 2020, <https://mck.co/3nK8b2>.

<sup>109</sup> See Rule 3110(f)(1)(F).

<sup>110</sup> See Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081, 57082 (October 5, 2007) (Notice of Filing of File No. SR–FINRA–2007–008).

<sup>111</sup> See Exchange Act Section 15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E), and Exchange Act Section 15(b)(6)(A), 15 U.S.C. 78o(b)(6)(A).

<sup>112</sup> 15 U.S.C. 78o–3(b)(6).

<sup>113</sup> According to the Survey of Working Arrangements and Attitudes (SWAA), post-COVID, many employers are planning to allow employees to work from home about 2.2 days per week on average. See Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, *SWAA February 2023 (Updates February 12, 2023)*, [https://wfhresearch.com/wp-content/uploads/2023/02/WFHResearch\\_updates\\_](https://wfhresearch.com/wp-content/uploads/2023/02/WFHResearch_updates_)

As discussed above, a location registered as a branch office must have one or more appropriately registered representatives or principals in each office, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.

As of December 31, 2022, FINRA’s membership included 3,381 firms<sup>115</sup> with 150,495 registered branch offices. Of these branch offices, 18,564 (12%) are OSJs, with 2,451 of them identified as private residences.<sup>116</sup> There are 21,510 principal level registered persons serving as OSJ supervisors, with 2,165 (12%) working at OSJs identified as private residences.<sup>117</sup> Data on the number of residential locations at which supervisors are currently working full or part time may be incomplete, due to the temporary suspension of the Form BR requirement for new offices included in Notice 20–08. However, large member firms (500 or more registered persons) account for about 69% of OSJs. By type of business, diversified and retail firms account for 81% of OSJs. To the extent that these member firms account for

most supervisory staff, they are potentially currently making broad use of hybrid workforce arrangements involving residential locations.

c. Economic Impacts

Absent the proposed rule change, if the temporary relief on registering new branches with Form BR, provided during the pandemic, ends, many member firms would likely need to either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices. This potential increase in office count would impact inspection obligations and in some cases, licensing requirements associated with individual locations. These additional requirements would hold even for office locations that bear lower risk characteristics and from which lower risk supervisory functions are conducted. The economic impacts of these changes would be mitigated by the proposed rule change.

Changes in the number of different types of offices and locations since the start of the pandemic, along with current data, can provide a rough indication of the potential impact of the

proposed rule change on firms. As Table 1 below shows, the number of offices and locations has fallen except for non-branch locations. Residential non-branch locations have increased by 17,603 (75%). Some of these new residential non-branch locations would have needed to register as OSJs if not for the temporary suspension of the Form BR requirement and will need to register as OSJs unless the proposed rule change is adopted. Further, some of the 2,451 private residences that are currently registered as OSJs, described above, might be able to become Residential Supervisory Locations if the proposed rule change is adopted. The numbers suggest that the number of offices and locations that may benefit from the proposed rule change is in the thousands. While Form U4 and Form BR can be used to count numbers of work locations and identify high-level activities at registered branch offices, the number of residential locations that would meet the conditions of proposed Rule 3110.19(a) alone would depend on specific information about the activities at residential locations that these forms do not provide.<sup>118</sup>

TABLE 1—NUMBERS OF OFFICES AND LOCATIONS, PRE-PANDEMIC AND CURRENT

	December 31, 2019	December 31, 2022
Registered branch locations .....		
OSJs .....	152,682	150,495
Non-OSJs .....	19,123	18,564
Non-branch locations .....	134,559	131,931
Residential non-branch locations .....	43,678	59,830
	23,475	41,078

i. Anticipated Benefits

The proposed rule change would allow some of the work arrangements adopted during the pandemic to continue with only small additional compliance costs. Specifically, as long as the location is a private residence and is not otherwise ineligible under the rule, associated persons could continue to conduct work that meets the requirements of the proposed rule change. Not all new residential locations would qualify as Residential

Supervisory Locations, so some would need to register as some type of branch location—and face higher compliance costs—or otherwise meet a branch office exclusion under Rule 3110(f)(2) or stop operating as a work location.

The proposed rule change also creates an opportunity for continued innovation in workforce arrangements. The proposed rule change may lead to centralizing tasks in specific OSJs and restructuring of job functions to enable the use of a Residential Supervisory Location on a full or part time basis, and

possibly an increase in the number of supervisors. Some current OSJs might qualify as Residential Supervisory Locations with no further adjustments, allowing members to reduce expenses on compliance. Firms would make use of these opportunities if they are beneficial to their operations, and not otherwise.

The proposed rule change would also support the competitiveness of the broker-dealer industry for educated individuals who seek professional

<sup>115</sup> This count excludes firms with membership pending approval, and withdrawn or terminated from membership.

<sup>116</sup> The number of branch offices and OSJs is derived from Form BR, a uniform form that a member firm uses to register with FINRA and as required by the relevant state jurisdictions or other SROs, the firm’s location as a branch office. Form BR’s Section 1 (General Information) provides a place for a firm to indicate whether the branch office is a private residence by checking a “Private Residence Checkbox.” The number of OSJs is derived from Form BR’s Section 2 (Registration/Notice Filing/Type of Office/Activities), which

requires a firm to indicate whether the branch office is an OSJ. Some OSJs have more than one supervisor, and some principals serve as supervisors for more than one OSJ. FINRA’s records from Form U4 show that, altogether, there are about 137,777 registered persons with principal registration categories (including those in OSJ supervisory roles).

<sup>117</sup> In addition, FINRA member firms with a single branch account for 1,698 of these OSJs and 2,064 of the supervisors. Sixty-eight FINRA member firms did not have any branches registered at the end of year 2022; these firms are all small member firms.

<sup>118</sup> Non-branch locations do not have to be registered with FINRA. The estimates for non-branch locations are obtained by reviewing Form U4. There may be some double counting of non-branch locations if members record the address differently on more than one Form U4. For the numbers of non-branch locations in Table 1, FINRA counted, by firm, unique addresses based on the first seven characters of the Form U4 “Street 1” field, city and state. Addresses that matched the address of the main office or of an existing registered branch were excluded.

positions.<sup>119</sup> The expectation of workplace flexibility and remote work by such individuals may lead them away from the broker-dealer industry if other segments of financial services or professional occupations offer more flexible workforce arrangements.

As noted above, the pandemic caused firms throughout the financial services sector to accelerate the adoption of technological solutions.<sup>120</sup> Technology has been used not only to make remote work possible but also to conduct a range of compliance and regulatory risk management activities. By facilitating hybrid work arrangements, the proposed rule change would support continued adoption and innovation in technological solutions and reductions in the cost of these solutions.<sup>121</sup>

Finally, the proposed rule change would relieve member firms from paying FINRA branch office registration fees for locations that would be branch offices under the baseline but qualify as Residential Supervisory Locations. Member firms may also find that some existing branch locations become unnecessary given the proposed rule change and could reduce expenses attendant to those locations, including such fees. However, member firms would still need to pay branch office registration fees generally for new residential locations that meet the definition of a “branch office,” and are not covered by the proposed Residential Supervisory Location designation or do not meet a branch office exclusion under Rule 3110(f)(2).

<sup>119</sup> See note 113, *supra*. See also Jose Maria Barrero, Nicholas Bloom & Steven J. Davis, Why Working from Home Will Stick (NBER Working Paper 28731, April 2021), <https://wfhresearch.com/wp-content/uploads/2021/04/w28731-3-May-2021.pdf>, who point to a lasting effect of the pandemic on work arrangements, in particular for those with higher education and earnings; and Alexander Bick, Adam Blandin & Karel Mertens, Work from Home Before and After the COVID–19 Outbreak, (Working Paper, October 2022), [https://karelmertens.com/files.wordpress.com/2022/11/wfh\\_oct\\_15\\_paper.pdf](https://karelmertens.com/files.wordpress.com/2022/11/wfh_oct_15_paper.pdf), who find consistent results, with a higher adoption rate of work from home jobs in Finance and Insurance, relative to other industries, reflected in Figure 10. Both papers, based on different surveys and, in Bick et al. with added results from a model, conclude that around 22% of full workdays will be provided from home in the long run.

<sup>120</sup> See note 114, *supra*.

<sup>121</sup> See Ben Charoenwong, Zachary T. Kowaleski, Alan Kwan, & Andrew Sutherland, RegTech, MIT Sloan Research Paper 6563–22 (September 16, 2022), Available at SSRN: <https://ssrn.com/abstract=4000016>. The authors show that broker-dealers that made required compliance technology investments were able to make complementary technology investments in communications and customer relationship management software that resulted in a reduced number of complaints and less employee misconduct.

## ii. Anticipated Costs

The proposed rule change provides firms with a new designation for work locations without removing any designations that are available under the baseline. Firms will therefore use the new Residential Supervisory Location designation only if doing so is beneficial to their operations relative to using one of the existing designations. The cost of complying with the requirements of the new designation for work locations is obviously a factor in this decision. Firms may incur a number of new one-time costs, such as adjusting staffing and activities at existing locations, to initially meet the requirements of proposed Rule 3110.19. Firms may also need to develop new written supervisory procedures and new trainings for staff at Residential Supervisory Locations, and deploy these trainings, so staff are aware of the compliance requirements. Firms may incur new ongoing costs to monitor for compliance and for adjusting staffing and designations if a Residential Supervisory Location becomes ineligible for this designation because an associated person incurs events or actions described in proposed Rule 3110.19(b).

Classifying residential locations that would otherwise need to register as OSJs or branch offices as Residential Supervisory Locations will remove certain compliance requirements. Depending on the type of branch, the reduction in compliance requirements may include no longer having to have one or more appropriately registered representatives or principals in each office or to conduct inspections annually or every three years. These reductions in compliance requirements may create risks to member firms and investors.

To mitigate these risks, the proposal excludes locations on the basis of inexperience or prior harmful conduct by individuals working at those locations, and limits the activities that can be performed at those locations. The designation of certain locations as ineligible provides minimum standards for staff that are eligible to work in such locations. FINRA expects that most firms would go beyond these minimum standards in selecting staff who would perform supervisory and other sensitive work at Residential Supervisory Locations, and in monitoring their conduct.

## d. Alternatives Considered

FINRA is proposing to provide certain regulatory accommodations for the innovations in business organization

and operations that occurred during the pandemic by modeling the Residential Supervisory Locations after the existing primary residence and non-primary residence exclusions, which have been in effect since 2005. FINRA considered adopting a proposed rule with just those exclusions and without the designation of certain locations as ineligible. More locations would qualify as Residential Supervisory Locations without the additional requirements. FINRA expects, however, that the proposed rule change provides a better balance of the potential benefits and the risks that could impose costs on members and investors.

In addition, FINRA considered the merits of adapting other requirements similar to those FINRA had proposed in File No. SR–FINRA–2022–021, a proposal to establish a voluntary three-year remote inspections pilot program.<sup>122</sup> In particular, the 2022 Remote Inspections Pilot Program Rule Filing includes the requirement for a firm to conduct and document a risk assessment considering several factors referenced in Rule 3110 and others, for each office or location where a firm determines to conduct a remote inspection. FINRA believes that adding the requirement for a firm to conduct and document a risk assessment for designating an office or location as a Residential Supervisory Location would be largely redundant given other requirements applicable to designating an office or location as an RSL. A firm continues to have a fundamental obligation under Rule 3110(a) 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. This supervisory system would, at least in effect, require the assessment and mitigation of the risk that the activities of associated persons working at Residential Supervisory Locations would not comply with the securities laws. The supervisory system thereby reduces the benefit of a separately conducted and documented risk assessment. Similarly, under Rule 3110(b), a firm is required to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve

<sup>122</sup> See Securities Exchange Act Release No. 96520 (December 16, 2022), 87 FR 78737 (December 22, 2022) (Notice of Partial Amendment No. 1 to File No. SR–FINRA–2022–021) (“2022 Remote Inspections Pilot Program Rule Filing”).

compliance with applicable securities laws and regulations, and with applicable FINRA rules. These supervisory procedures would, at least in effect, require the assessment and mitigation of risks of non-compliance posed by the types of business conducted at Residential Supervisory Locations. FINRA determined that requiring a firm to conduct and document a risk assessment for designating an office or location as an RSL would not provide an additional benefit to members or investors.

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

The SEC published the 2022 RSL Rule Filing for comment and as of the end of the comment period on August 23, 2022, the SEC had received 20 unique comment letters, then subsequently received six more comment letters.<sup>123</sup> On October 31, 2022, FINRA responded to the comments and did not propose changing the terms of the 2022 RSL Rule Filing in response to the comments.<sup>124</sup> On the same day, the Commission instituted proceedings to determine whether to approve or disapprove the 2022 RSL Rule Filing ("Order"),<sup>125</sup> and the SEC received five comments letters in response to the Order.<sup>126</sup> On December 9, 2022, FINRA responded to those comments and did not propose changing the 2022 RSL Rule Filing in response to them.<sup>127</sup> Since then, the SEC has received one supplemental comment letter.<sup>128</sup> March 30, 2023 was the date by which the SEC was required to either approve or disapprove the 2022 RSL Rule Filing. But on March 29, 2023, FINRA withdrew the 2022 RSL Rule Filing from the SEC to consider whether modifications and clarifications to the filing would be appropriate in response to concerns raised by commenters. While the proposed rule change retains many of the terms of the 2022 RSL Rule Filing, the proposed rule change makes

some adjustments, which are discussed in detail above under Item II.A.1.b.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-006 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-2023-006. 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 the 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-2023-006 and should be submitted on or before April 27, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>129</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-07145 Filed 4-5-23; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97232; File No. SR-Phlx-2023-09]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Permit the Listing and Trading of Options on the Nasdaq-100 ESG Index**

March 31, 2023.

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 March 28, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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**

The Exchange proposes to permit the listing and trading of options on the Nasdaq-100 ESG Index.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>129</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>123</sup> See note 9, *supra*.

<sup>124</sup> See note 9, *supra*; see also Exhibit 2b.

<sup>125</sup> See Securities Exchange Act Release No. 96191 (October 31, 2022), 87 FR 66767 (November 4, 2022) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-019).

<sup>126</sup> See note 9, *supra*.

<sup>127</sup> See note 9, *supra*; see also Exhibit 2c.

<sup>128</sup> See Letter from Bernard V. Canepa, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated December 20, 2022, <https://www.sec.gov/comments/sr-finra-2022-019/srfinra2022019-20153234-320719.pdf>.