

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 012

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		Submit with link to Prefiling or Request for Waiver option
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	

<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Extend Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sarah Last Name * Kwak

Title * Associate General Counsel

E-mail * sarah.kwak@finra.org

Telephone * (202) 728-8471 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/22/2023

(Title *)

By Kosha Dalal

Vice President and Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Kosha Dalal
Digitally signed by Kosha Dalal
Date: 2023.09.22 17:13:51 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

FINRA-2023-012 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

FINRA-2023-012 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024 inspection obligations through the earlier of the effective date of the remote inspections pilot program proposed in File No. SR-FINRA-2023-007, if approved, or June 30, 2024 within the scope of the supplementary material.² FINRA is proposing to extend Rule 3110.17 to provide member firms continuity related to conducting inspections as part of satisfying the obligations of Rule 3110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.³ By statute, the

¹ 15 U.S.C. 78s(b)(1).

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

³ SEC staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. See SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) and Regulatory Notice 11-54 (November 2011) (joint SEC and FINRA guidance stating, a “broker-dealer must conduct on-site inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.”) (footnote defining an OSJ omitted). See also SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed

Commission has until the end of December 2023 to approve or disapprove the Remote Inspections Pilot Program Proposal.⁴ Given the uncertainty as to whether the Commission will approve or disapprove the Remote Inspections Pilot Program Proposal by the end of calendar year 2023, FINRA believes that the proposed extension is necessary to provide firms the time to prepare for either the resumption of on-site inspections if the Commission disapproves the Remote Inspections Pilot Program Proposal, or alternatively, the implementation of the proposed remote inspections pilot program (“Pilot Program”) if the Commission approves the Remote Inspections Pilot Program Proposal.

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

* * * * *

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

offices have not adequately discharged their supervisory obligations where there are no on-site routine or “for cause” inspections of those offices).

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

••• **Supplementary Material:** -----

.01 through .16 No Change.

.17 Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, [and] 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program, if Approved, or June 30, 2024.

(a) **Use of Remote Inspections.** Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in the calendar years specified in this supplementary material pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must [be]have been completed on or before March 31, 2021. Inspections for calendar year 2021 must [be]have been completed on or before December 31, 2021, [and inspections] for calendar year 2022, [must be completed] on or before December 31, 2022, and for calendar year 2023, on or before December 31, 2023. With respect to a member's obligation to conduct an inspection of an office or location in calendar year [2023]2024, a member has the option to conduct those inspections remotely through the earlier of the effective date of the Remote Inspections [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) No Change.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member’s overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member’s use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a member’s remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., “red flags”), the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis [when the member’s operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts]. The temporary relief provided by this Rule 3110.17 does not extend to a member’s inspection requirements beyond the earlier of the effective date of the Remote Inspections [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024, and such inspections must be conducted in compliance with Rule 3110(c).

(d) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

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

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, FINRA provided temporary relief to member firms from certain regulatory requirements, including those set forth under Rule 3110. To help alleviate the attendant logistical challenges member firms were encountering to satisfy the inspection component of their Rule 3110(c) requirements, FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections) to extend the time by which member firms were required to complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021 with the expectation that the extension did not relieve firms from the on-site portion of the inspections of their offices and locations,⁵ and subsequently adopted Rule 3110.17 to provide member firms the option, subject to specified requirements under the supplementary material, to complete remotely specified calendar year inspection obligations without an on-site visit

⁵ 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).

to the office or location.⁶ Rule 3110.17 has been extended and is currently set to end on December 31, 2023.⁷

The pandemic accelerated the industry's adoption of a broad remote work environment and FINRA recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of FINRA's overall efforts to modernize FINRA rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Commission to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.⁸

If the Commission approves the Remote Inspections Pilot Proposal, the proposed extension of Rule 3110.17 would allow both FINRA and the firms that are planning to participate in the proposed Pilot Program additional time to develop the technology and

⁶ 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).

⁷ See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-030) (extending the relief through December 31, 2023); see also Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-001) (extending the relief through December 31, 2022) and Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-023) (extending the relief through June 30, 2022).

⁸ See note 2, supra.

processes that will be essential to operationalize compliance with the Pilot Program’s requirements. For example, firms will need to conduct an eligibility review, and conduct and document a risk assessment for each office and location that they elect to inspect remotely, and implement technology to collect and report the required data and information to FINRA. Further, FINRA guidance will be needed to guide implementation in various circumstances.⁹ Firms that do not elect to participate or would be excluded from participating in the proposed Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations¹⁰ within the context of some lingering health concerns and fluid work locations.¹¹ If the Commission disapproves the Remote Inspections Pilot Program

⁹ As part of the implementation process, FINRA intends to publish a Regulatory Notice or other guidance about the operational aspects of the proposed Pilot Program.

¹⁰ See note 3, supra.

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

Proposal, all firms would be impacted and would need additional time to staff, schedule and resume conducting on-site inspections of offices or locations.¹²

In sum, as calendar year 2024 is approaching its fourth quarter, the proposed extension of Rule 3110.17 would provide firms continuity in meeting their inspection obligations after the end of the Commission's statutory deadline to approve or disapprove the Remote Inspections Pilot Proposal. If the Commission approves the Remote Inspections Pilot Proposal, the proposed additional time would allow FINRA to operationalize the Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the proposed Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2) firms that are not planning to participate or are excluded from participating in the proposed Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of Rule 3110(c).

FINRA is not proposing to amend the other conditions of the temporary rule. The current conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. FINRA continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their Rule 3110(c) obligations under the current circumstances

States, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited September 22, 2023).

¹² See note 3, *supra*.

described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Rule 3110.17 to conduct remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some in-person inspections would be feasible and add value to the firms' supervisory program. FINRA emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Rule 3110.17 or in accordance with the proposed Pilot Program, or on-site, would be held to the existing standards of review under Rule 3110.12 (Standards for Reasonable Review).¹³

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing to make the proposed rule change operative on January 1, 2024.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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

¹³ Those standards provide, in part, that based on the factors set forth under that supplementary material, members "may need to provide for more frequent review of certain locations."

¹⁴ 15 U.S.C. 78o-3(b)(6).

interest. The proposed rule change is intended to provide firms certainty now as they plan their upcoming calendar year 2024 inspection program. This temporary proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In light of the planning associated with firms resuming on-site visits to offices and locations to satisfy Rule 3110(c)(1), if the Commission disapproves the Remote Inspections Pilot Program Proposal, and the significant planning requirements that the proposed Pilot Program, if approved, would entail for FINRA and the firms that elect to participate, FINRA believes that the proposed rule change provides sensibly tailored relief, while continuing to serve and promote the protection of investors and the public interest.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The potential economic impacts of Rule 3110.17 as described in File No. SR-FINRA-2020-040 continue to have applicability to the proposed rule change herein. The proposed rule change would extend the temporary relief that provides firms with the option to fulfill their inspection obligations remotely. The proposed extension would include calendar year 2024 inspection obligations through the earlier of the effective date of the Remote Inspections Pilot Program Proposal, if approved, or June 30, 2024 within the scope of the supplementary material without making substantive changes to the other

aspects of the provision. In addition, the proposed extension would provide firms certainty for the reasons stated above. FINRA believes that this limited extension in temporary relief, together with the requirements for using the temporary relief in Rule 3110.17, would not diminish investor protection.

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

Written comments were neither solicited nor received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁶ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing or such shorter time as the Commission may designate.

In accordance with Rule 19b-4(f)(6),¹⁷ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter

¹⁵ 15 U.S.C. 78s(b)(3).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁸

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

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

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, and 2023) under FINRA Rule 3110 (Supervision) to include calendar year 2024 inspection

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

obligations through the earlier of the effective date of the remote inspections pilot program proposed in File No. SR-FINRA-2023-007, if approved, or June 30, 2024 within the scope of the supplementary material.⁴ FINRA is proposing to extend Rule 3110.17 to provide member firms continuity related to conducting inspections as part of satisfying the obligations of Rule 3110(c) (Internal Inspections) at offices and locations requiring inspection during the first half of calendar year 2024.⁵ By statute, the Commission has until the end of December 2023 to approve or disapprove the Remote Inspections Pilot Program Proposal.⁶ Given the uncertainty as to whether the Commission will approve or disapprove the Remote Inspections Pilot Program Proposal by the end of calendar year 2023, FINRA believes that the proposed extension is necessary to provide firms the time to prepare for either the resumption of on-site inspections if the Commission disapproves the Remote Inspections Pilot Program Proposal, or alternatively, the implementation of

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

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

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

the proposed remote inspections pilot program (“Pilot Program”) if the Commission approves the Remote Inspections Pilot Program Proposal.

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

* * * * *

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3100. SUPERVISORY RESPONSIBILITIES

3110. Supervision

(a) through (f) No Change.

••• Supplementary Material: -----

.01 through .16 No Change.

.17 Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, [and] 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program, if Approved, or June 30, 2024.

(a) Use of Remote Inspections. Each member obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location in the calendar years specified in this supplementary material pursuant to, as applicable, paragraphs (c)(1)(A), (B) and (C) under Rule 3110 may, subject to the requirements of this Rule 3110.17, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule 3110.16, inspections for calendar year 2020 must [be]have been completed on or before March 31, 2021. Inspections for calendar year 2021 must [be]have been completed on or

before December 31, 2021, [and inspections] for calendar year 2022, [must be completed] on or before December 31, 2022, and for calendar year 2023, on or before December 31, 2023. With respect to a member's obligation to conduct an inspection of an office or location in calendar year [2023]2024, a member has the option to conduct those inspections remotely through the earlier of the effective date of the Remote Inspections [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024. Notwithstanding Rule 3110.17, a member shall remain subject to the other requirements of Rule 3110(c).

(b) No Change.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the member's overall obligation to have an effective supervisory system and therefore, the member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. A member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Rule 3110.12. Where a member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (i.e., "red flags"), the member may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis [when the member's operational difficulties associated with COVID-19 abate, nationally or locally as relevant, and the challenges a member is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts]. The temporary

relief provided by this Rule 3110.17 does not extend to a member's inspection requirements beyond the earlier of the effective date of the Remote Inspections [p]Pilot [p]Program proposed in File No. [SR-FINRA-2022-021]SR-FINRA-2023-007, if approved, or [December 31, 2023]June 30, 2024, and such inspections must be conducted in compliance with Rule 3110(c).

(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, FINRA provided temporary relief to member firms from certain regulatory requirements, including those set forth under Rule 3110. To help alleviate the attendant logistical challenges member firms were encountering to satisfy the inspection component of their Rule 3110(c) requirements, FINRA adopted Rule 3110.16 (Temporary Extension of Time to Complete Office Inspections) to extend the time by which member firms were required to complete their calendar year 2020

inspection obligations under Rule 3110(c) to March 31, 2021 with the expectation that the extension did not relieve firms from the on-site portion of the inspections of their offices and locations,⁷ and subsequently adopted Rule 3110.17 to provide member firms the option, subject to specified requirements under the supplementary material, to complete remotely specified calendar year inspection obligations without an on-site visit to the office or location.⁸ Rule 3110.17 has been extended and is currently set to end on December 31, 2023.⁹

The pandemic accelerated the industry's adoption of a broad remote work environment and FINRA recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (e.g., private residences). As part of FINRA's overall efforts to modernize FINRA rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Commission

⁷ See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-019).

⁸ See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040).

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

to establish a voluntary, three-year remote inspections pilot program that would allow eligible firms to conduct inspections of all or some offices or locations, remotely, subject to the specified terms therein.¹⁰

If the Commission approves the Remote Inspections Pilot Proposal, the proposed extension of Rule 3110.17 would allow both FINRA and the firms that are planning to participate in the proposed Pilot Program additional time to develop the technology and processes that will be essential to operationalize compliance with the Pilot Program's requirements. For example, firms will need to conduct an eligibility review, and conduct and document a risk assessment for each office and location that they elect to inspect remotely, and implement technology to collect and report the required data and information to FINRA. Further, FINRA guidance will be needed to guide implementation in various circumstances.¹¹ Firms that do not elect to participate or would be excluded from participating in the proposed Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations¹² within the context of some lingering health concerns and fluid work locations.¹³ If the Commission disapproves the Remote Inspections Pilot

¹⁰ See note 4, supra.

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

¹² See note 5, supra.

¹³ While the World Health Organization declared an end to COVID-19 as a public health emergency, COVID-19 remains an ongoing public health problem. See WHO Director-General, Opening Remarks at the Media Briefing on COVID-19 (May 5, 2023) (stating, in part, that the “virus is here to stay. It is still killing, and it’s still changing. The risk remains of new variants emerging that cause new surges in cases and deaths.”), <https://www.who.int/news->

Program Proposal, all firms would be impacted and would need additional time to staff, schedule and resume conducting on-site inspections of offices or locations.¹⁴

In sum, as calendar year 2024 is approaching its fourth quarter, the proposed extension of Rule 3110.17 would provide firms continuity in meeting their inspection obligations after the end of the Commission’s statutory deadline to approve or disapprove the Remote Inspections Pilot Proposal. If the Commission approves the Remote Inspections Pilot Proposal, the proposed additional time would allow FINRA to operationalize the Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the proposed Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2) firms that are not planning to participate or are excluded from participating in the proposed Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of Rule 3110(c).

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

¹⁴ See note 5, supra.

FINRA is not proposing to amend the other conditions of the temporary rule. The current conditions of the supplementary material for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. FINRA continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their Rule 3110(c) obligations under the current circumstances described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Rule 3110.17 to conduct remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some in-person inspections would be feasible and add value to the firms' supervisory program. FINRA emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Rule 3110.17 or in accordance with the proposed Pilot Program, or on-site, would be held to the existing standards of review under Rule 3110.12 (Standards for Reasonable Review).¹⁵

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

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is intended to provide firms certainty now as they plan their upcoming calendar year 2024 inspection program. This temporary proposed supplementary material does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In light of the planning associated with firms resuming on-site visits to offices and locations to satisfy Rule 3110(c)(1), if the Commission disapproves the Remote Inspections Pilot Program Proposal, and the significant planning requirements that the proposed Pilot Program, if approved, would entail for FINRA and the firms that elect to participate, FINRA believes that the proposed rule change provides sensibly tailored relief, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The potential economic impacts of Rule 3110.17 as described in File No. SR-

¹⁶ 15 U.S.C. 78q-3(b)(6).

FINRA-2020-040 continue to have applicability to the proposed rule change herein. The proposed rule change would extend the temporary relief that provides firms with the option to fulfill their inspection obligations remotely. The proposed extension would include calendar year 2024 inspection obligations through the earlier of the effective date of the Remote Inspections Pilot Program Proposal, if approved, or June 30, 2024 within the scope of the supplementary material without making substantive changes to the other aspects of the provision. In addition, the proposed extension would provide firms certainty for the reasons stated above. FINRA believes that this limited extension in temporary relief, together with the requirements for using the temporary relief in Rule 3110.17, would not diminish investor protection.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2023-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2023-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2023-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).