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May 25, 2023

Via E-Mail
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2023-007
Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

Dear Secretary:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to the Financial Industry Regulatory Authority's ("FINRA") Notice of Filing of a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) (the "Notice").[2] The Notice proposes to add new Supplementary Material .18 to FINRA Rule 3110 (the "Proposed Rule"), which would adopt a voluntary, three-year remote inspections pilot program to allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all of their branch offices and locations remotely without an on-site visit to such office or location.

BACKGROUND

FINRA first proposed the introduction of a remote inspections pilot program in August 2022 with subsequent amendments in December 2022 (the "2022 Proposal").[3] The 2022 Proposal, as amended, contained terms that are largely similar to the Proposed Rule.[4] The Committee submitted two separate comment letters supportive of the 2022 Proposal, noting that FINRA's proposed institution of a remote inspections pilot program took a measured approach, with appropriate guardrails and restrictions around the member firms, and the specific offices of member firms, that would be allowed to participate.[5]

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[1] The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

[2] *See* Securities Exchange Act Release No. 34-97398 (April 28, 2023) 88 Fed. Reg. 28620 (May 4, 2023) (Notice of Filing of File No. SR-FINRA-2023-007), available at https://www.finra.org/sites/default/files/2023-05/NOF-FINRA-2023-007.pdf.

[3] *See* Securities Exchange Act Release No. 34-95452 (Aug. 9, 2022) 87 Fed. Reg. 50144 (Aug. 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-021), available at https://www.govinfo.gov/content/pkg/FR-2022-08-15/pdf/2022-17428.pdf.

[4] 88 Fed. Reg. at 28620 (". . . the terms of the proposed rule change herein are largely similar to File No. SR-FINRA-2022-021 filed in July 2022, then amended in December 2022 . . . .").

[5] The Committee submitted two comment letters related to the 2022 Proposal. The first was dated September 6, 2022 and was filed in response to FINRA's August 9, 2022 proposal (the "September Comment Letter"). The second was dated December 7, 2022 and was filed in response to the SEC's institution of proceedings to

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COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rule and is generally supportive of the proposed changes. Beyond expressing support for the Proposed Rule, the Committee comments for the purpose of seeking clarification concerning a proposed requirement that firms provide FINRA with 2019 data regarding on-site inspections.

1. The Committee Supports FINRA's Proposed Modernization of its Supervision Rule to Allow for Remote Inspections

The Committee firmly agrees with FINRA's statement in the Notice that:

> proposed Rule 3110.18, on balance, preserves investor protection objectives through the proposed safeguards while also providing FINRA the opportunity to gauge the effectiveness of remote inspections as part of a modernized, reasonably designed supervisory system that reflects the current work environment and availability of technologies that did not exist when the on-site inspection originally was conceived.[6]

The Proposed Rule reflects the reality that member firms' office environments have drastically changed since the onset of the COVID-19 pandemic, with many firms moving towards a hybrid workforce model, with employees working both on-site in a conventional office location and remotely in a private residence. Further, the Notice acknowledges that, over the years, firms have significantly changed the way that they conduct business and communicate, with many firms moving towards electronic recordkeeping, electronic communication (through e-mail, video, or online meetings), and online platforms for opening and placing trades in customer accounts.[7] The increased digitization of firm data and centralization of control functions has allowed firms to actively monitor their associated persons, regardless of their location, on a more continuous basis, rather than relying on periodic, in-person examinations.[8] The evolving business environment (which predates the pandemic) coupled with the increase in remote work has resulted in the advancement of technology solutions that firms can use to "enhance[] the effectiveness and efficienc[y] of a firm's overall and ongoing supervision and monitoring of the activities occurring at their offices and locations."[9]

The Committee firmly supports FINRA's statement in the Notice that "regulatory models should evolve to benefit from the availability and use of effective technology tools" given the "confluence of advances in compliance technology and the shift to hybrid work arrangements."[10] The Committee believes the Proposed Rule appropriately balances the need to evolve the regulatory regime with the protection of investors by requiring that member firms take a "reasonable, risk-based" approach to using remote inspections and disallowing certain firms and firm offices from participating in remote inspections if they present a higher risk of possible

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determine whether to approve or disapprove the 2022 Proposal (the "December Comment Letter"). The September Comment Letter is posted at https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20138362-308395.pdf and the December Comment Letter is posted at https://www.sec.gov/comments/sr-finra-2022-021/srfinra2022021-20152480-320343.pdf.

[6] 88 Fed. Reg. at 28620.

[7] *Id.* at 28622-23.

[8] *Id.* at 28623.

[9] *Id.*

[10] *Id.* at 28624.

investor harm. Further, the Committee supports FINRA's proposal to collect uniform data from member firms that employ remote inspections, which will allow FINRA to study the effectiveness of remote inspections over the course of the three-year pilot program.

2. FINRA's Proposed Requirement for Firms to Provide 2019 Data Regarding On-Site Inspections May Exclude Certain Firms From Participating in the Remote Inspection Pilot Program.

Under the Proposed Rule (SM.18(h)(2)), firms are required to provide certain information to FINRA from 2019 on-site inspections to assist in providing a baseline for inspection activities. Given that the recordkeeping requirements under FINRA Rule 3110(c)(2) requires inspection reports to be maintained for "a minimum of three years," it is conceivable that the information requested may no longer be maintained by the firm. The Committee understands the value of obtaining information regarding on-site inspection as a baseline to measure against firms' remote inspections, however, there is concern that the requirement to provide such information from 2019 may exclude certain firms from being able to participate since they may not be able to provide information for 2019 inspections.

The Committee believes that firms should be allowed to participate in the pilot even if their records from 2019 inspection activity cannot produce all the requested information due to the limited term of the recordkeeping requirement (i.e., three years). As a result, we recommend that the information sharing requirement be revised to require providing the information "if available in the firm's records" and requiring firms to make a "best efforts" attempt to collect the requested information from all reasonably available resources.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

Respectfully submitted,

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

EVERSHEDS SUTHERLAND

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Monday, May 22, 2023 8:42 PM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: Arnold, Eric <ericarnold@eversheds-sutherland.com>; andrewmount@eversheds-sutherland.com
Subject: Update FINRA Remote Office Rulemaking-Draft Comment Letter on Remote Supervisory Location Rule Filing

As a follow-up to our email below we have attached a draft comment letter on the 2023 Remote Inspections Proposal. The letter generally supports the proposal but identifies a couple of areas for which clarification would be helpful. We plan on filing the letter on May 25th. Please feel free to reach out with any comments or to discuss. Regards, Cliff

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Tuesday, May 16, 2023 1:21 PM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: Arnold, Eric <ericarnold@eversheds-sutherland.com>; andrewmount@eversheds-sutherland.com
Subject: Update FINRA Remote Office Rulemaking-Draft Comment Letter on Remote Supervisory Location Rule Filing

As a follow-up to our e-mails below, attached please find the Committee's comment letter that was filed on April 27th in response to FINRA's amended Remote Supervisory Location Proposal. We also want to update you regarding FINRA's remote inspection rule proposal.

As anticipated, FINRA has withdrawn its original remote inspection rule proposal, which was amended in December 2022 (the "2022 Remote Inspection Proposal") and re-proposed the rule (the "2023 Remote Inspection Proposal"). The comment deadline for the 2023 Remote Inspection Proposal is **May 25, 2023**.

The 2023 Remote Inspection Proposal is very similar to the 2022 Remote Inspection Proposal, as amended in December 2022, with several minor changes. While the 2022 Remote Inspection Proposal faced substantial pushback from NASAA, FINRA notably did not make changes in the new proposal. The 2023 Remote Inspection Proposal, similar to the 2022 Remote Inspection Proposal, would introduce a voluntary, three-year remote inspections pilot program that would allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such office or location. Prior to electing a remote inspection, the firm must develop a reasonable, risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.

The Committee filed a supportive comment letter in response to the 2022 Remote Inspection Proposal. We plan to take a similar approach with respect to the 2023 Remote Inspection Proposal but welcome any Committee member feedback and/or suggested comments.

Below is a summary of the key changes between the 2023 Remote Inspections Proposal and the 2022 Remote Inspections Proposal, as amended:

- **Amended Location Ineligibility Criteria**: In the December 2022 amendment to the 2022 Remote Inspection Proposal, FINRA proposed criterion that would make a member firm's office or location ineligible for a remote inspection if one or more associated persons at the location were a part of the member's trading desk.
    - *In response to a comment that this criterion was overly broad, the 2023 Remote Inspection Proposal would adjust it to provide that a location would be ineligible*

if an associated person at the location engages in proprietary trading or the direct supervision of such activity.

- **Provision of Information to FINRA**: The 2023 Remote Inspection Proposal, similar to the previous proposal, would impose upon firms a data and information collection requirement as a condition for participating in the pilot program. On a quarterly basis, participating firms would be required to collect and produce to FINRA data, broken down by type of office (OSJ, branch offices, non-branch locations, etc.), of (1) the total number of inspections – on-site and remote – completed during each calendar quarter; (2) the number of those offices or locations in each calendar quarter that were subject to an on-site inspection because of a "finding" (a discovery made during an inspection that led to a remedial action or was listed on the member's inspection report); (3) the number of locations for which a remote inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings; and (4) the number of locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings. Firms would be required to provide additional information pertaining to their first year in the pilot program.

    - *In response to a comment from NASAA, the 2023 Remote Inspection Proposal would require firms to collect and provide to FINRA calendar year 2019 data and information (the most recent 12-month period during which the firm conducted in-person inspections), broken down by type of office, of: (1) the number of locations with an inspection completed during calendar year 2019; and (2) the number of locations in item (1) where "findings" were identified, the number of those findings and a list of the most significant findings. FINRA's goal is to collect baseline data and information about on-site inspections immediately preceding the pandemic.*

We will circulate a draft comment letter for Committee review in the next few days. In the meantime, please feel free to reach out to any one of us to discuss.

Regards,
Cliff

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Tuesday, April 25, 2023 12:42 PM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: Arnold, Eric <ericarnold@eversheds-sutherland.com>; andrewmount@eversheds-sutherland.com
Subject: Update FINRA Remote Office Rulemaking-Draft Comment Letter on Remote Supervisory Location Rule Filing

As a follow-up to the below, as noted the Remote Supervisory Location ("RSL") rule proposal has a comment deadline of **April 27th**. We have prepared and attached a generally supportive comment letter that serves to: (1) express support for the rule filing; and (2) re-raise the Committee comments made in connection with the 2022 RSL Proposal. The letter refers back to the Committee's previous comment letter for a more substantive discussion. We plan to discuss the remote office/remote inspection rulemaking and this draft comment letter on the Committee's BD/IA regulatory update call on **Wednesday April 26th at 3 p.m. ET**.

Please feel free to reach out to any one of us to discuss.

Regards,
Cliff

EVERSHEDS SUTHERLAND

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Saturday, April 22, 2023 8:25 AM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: andrewmount@eversheds-sutherland.com; Arnold, Eric <ericarnold@eversheds-sutherland.com>
Subject: Update FINRA Remote Office Rulemaking

A follow-up to our emails below regarding FINRA's remote office rulemaking.

Remote Inspections. As anticipated, FINRA has withdrawn its original remote inspection rule proposal, which was amended in December 2022 (the "2022 Remote Inspection Proposal") and re-proposed the rule (the "2023 Remote Inspection Proposal"). The 2023 Remote Inspection Proposal is very similar to the 2022 Remote Inspection Proposal, as amended in December 2022, with several minor changes. Notably, FINRA did not make changes to respond to many of NASAA's comments.

By way of background, the 2023 Remote Inspection Proposal, similar to the 2022 Remote Inspection Proposal, would introduce a voluntary, three-year remote inspections pilot program that would allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such office or location. Prior to electing a remote inspection, the firm must develop a reasonable, risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.

Below is a summary of the key changes between the 2023 Remote Inspections Proposal and the 2022 Remote Inspections Proposal, as amended:

- **Amended Location Ineligibility Criteria**: In the December 2022 amendment to the 2022 Remote Inspection Proposal, FINRA proposed criterion that would make a member firm's office or location ineligible for a remote inspection if one or more associated persons at the location were a part of the member's trading desk.
    - *In response to a comment that this criterion was overly broad, the 2023 Remote Inspection Proposal would adjust it to provide that a location would be ineligible if an associated person at the location engages in proprietary trading or the direct supervision of such activity.*
- **Provision of Information to FINRA**: The 2023 Remote Inspection Proposal, similar to the previous proposal, would impose upon firms a data and information collection requirement as a condition for participating in the pilot program. On a quarterly basis, participating firms would be required to collect and produce to FINRA data, broken down by type of office (OSJ, branch offices, non-branch locations, etc.), of (1) the total number of inspections – on-site and remote – completed during each calendar quarter; (2) the number of those offices or locations in each calendar quarter that were subject to an on-site inspection because of a "finding" (a discovery made during an inspection that led to a remedial action or was listed on the member's inspection report); (3) the number of locations for which a remote inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings; and (4) the number of locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings. Firms would be required to provide additional information pertaining to their first year in the pilot program.

- *In response to a comment from NASAA, the 2023 Remote Inspection Proposal would require firms to collect and provide to FINRA calendar year 2019 data and information (the most recent 12-month period during which the firm conducted in-person inspections), broken down by type of office, of: (1) the number of locations with an inspection completed during calendar year 2019; and (2) the number of locations in item (1) where "findings" were identified, the number of those findings and a list of the most significant findings. FINRA's goal is to collect baseline data and information about on-site inspections immediately preceding the pandemic.*

Remote Supervisory Locations ("RSL"). FINRA's RSL rule filing has been published in the Federal Register and has a comment deadline of April 27th. We will circulate a short comment letter for Committee review which restates comments we made when the rulemaking was initially proposed.

We will also plan to discuss the FINRA remote office filings on our next monthly BD/IA regulatory update call on Wednesday April 26th at 3 p.m. ET. Please contact any one of us with any questions.

Regards,
Cliff

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Monday, April 10, 2023 4:31 PM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: Arnold, Eric <ericarnold@eversheds-sutherland.com>; andrewmount@eversheds-sutherland.com
Subject: Update FINRA Remote Office Rulemaking

We write to provide the Committee with an update with regard to FINRA's Remote Supervisory Location ("RSL") rule filing. On March 29th, FINRA withdrew its original filing (the "2022 RSL Proposal") and re-proposed the rule (the "2023 RSL Proposal"). The 2023 RSL Proposal is similar to the 2022 RSL Proposal in many respects, but incorporates several key changes advocated for by the North American Securities Administrators Association ("NASAA"). We plan to discuss this filing on our next monthly BD/IA regulatory update call on **Wednesday, April 26th at 3pm et.**

By way of background, the 2023 RSL Proposal, identically to the 2022 RSL Proposal, would add new Supplementary Material .19 ("SM.19") to FINRA Rule 3110. SM.19 would establish a "RSL", a location that is the associated person's private residence where supervisory activities are conducted, that would be treated as a non-branch location (i.e., an unregistered office). As a non-branch location, a RSL 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 Offices of Supervisory Jurisdiction ("OSJs") and other supervisory branch offices.

In connection with the 2022 RSL Proposal, the Committee filed a generally supportive comment letter with two targeted comments related to expanding the eligibility criteria for a location to be designated as a RSL. The comments related to: (1) a requirement that would have limited the eligible locations for RSL designation to those with one associated person, or multiple related associated persons (but not include, for example, a location at which two unrelated associated persons live together); and (2) a condition that would have disqualified locations at which a designated supervisor has less than one year of direct supervisory experience with the firm. We note that the 2023 RSL Proposal does not modify either of the conditions that the Committee commented on.

Below is a summary of the key changes between the 2022 RSL Proposal and the 2023 RSL Proposal:

- **Books and Records:** The 2023 RSL Proposal would require that (i) the firm 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 firm's own written supervisory procedures under Rule 3110; (ii) the records are not physically or electronically maintained and preserved at the location; and (iii) the firm has prompt access to such records.

    - *The 2023 RSL Proposal's changes to the "books and records" requirements are relatively minor and are described by FINRA as a "clarifying adjustment."*

- **Surveillance and Technology Tools:** The 2023 RSL Proposal would require that a firm make a determination that its surveillance and technology tools are appropriate to supervise its RSLs, including, but not limited to: (i) firm-wide tools such as the firm's electronic recordkeeping system, electronic surveillance of e-mail and correspondence, electronic trade blotters; (ii) tools specific to the RSL based on the activities of the associated persons assigned to the location, products offered, and restrictions on the activity of the RSL; and (iii) system tools such as secure network connections and effective cybersecurity protocols.

    - *This requirement is new in the 2023 RSL Proposal – the 2022 RSL Proposal did not explicitly require that a firm "make a determination" that it had appropriate surveillance and technology tools to supervise RSLs.*

- **Firm Ineligibility Criteria:** The 2023 RSL Proposal would supplement the firm-level ineligibility criteria in the 2022 RSL Proposal by adding three new criteria, including: (i) a firm that receives notice from FINRA pursuant to Rule 9557, Rule 4120, or Rule 4130, unless FIRNA has otherwise permitted activities in writing pursuant to such rule; (ii) a firm that that is or becomes suspended by FINRA; (iii) a firm that, based on the date in CRD, had its FINRA membership become effective within the prior 12 months; and (iv) a firm that is or has been found within the past three years by the SEC or FINRA to have violated Rule 3110(c).

    - *This criteria would be in addition to firm-level ineligibility criteria found in the 2022 RSL Proposal, which includes members designated as "Restricted Firms" or "Taping Firms" or members undergoing a review under FINRA Rule 1017(a)(7) as a result of one or more associated persons at a location.*

- **Location Ineligibility Criteria:** The 2023 RSL Proposal would retain all of the location-specific ineligibility criteria found in the 2022 RSL Proposal, but would modify one of the criteria. Similar to the 2022 RSL Proposal, a location would be ineligible for designation as a RSL if one or more associated persons at the location is subject to an investigation, proceeding, or complaint by the member, the SEC, an SRO, or a state securities commission, alleging that they have failed to reasonably supervise another person subject to their supervision. In the 2023 RSL Proposal, FINRA broadened the scope of this criteria to include locations at which an associated person is subject to an investigation, proceeding, or complaint regarding "any state law pertaining to the regulation of securities."

    - *The 2023 RSL Proposal would also retain the following location-specific ineligibility criteria found in the 2022 RSL Proposal: (1) locations at which one or more associated persons is a designated supervisor who has less than one year of direct supervisory experience; (2) locations at which one or more associated persons is functioning as a principal for a limited period in accordance with FINRA Rule 1210.04; (3) locations at which one or more associated persons are subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA, or state*

regulatory agency; (4) locations at which one or more associated persons at such location is statutorily disqualified; (5) locations at which an associated person 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.

- **Provision of Information to FINRA:** FINRA is proposing to require firms to provide FINRA with a list of RSLs by the 15th day of the month following the calendar quarter.
    - *The 2022 RSL Proposal only required a firm to maintain a list of RSLs, but did not require firms to provide that information to FINRA on a regular basis.*

As noted above, we plan to discuss this filing on our next monthly BD/IA regulatory update call on Wednesday, April 26th at 3pm et. Please contact any one of us with any questions or comments.

Regards,
Cliff

From: Kirsch, Clifford <CliffordKirsch@eversheds-sutherland.us>
Sent: Monday, January 30, 2023 6:39 PM
To: Committee of Annuity Insurers <CommitteeofAnnuityInsurers@eversheds-sutherland.us>
Cc: Arnold, Eric <EricArnold@eversheds-sutherland.us>; Mount, Andrew <AndrewMount@eversheds-sutherland.us>
Subject: Update FINRA Remote Inspections

We wanted to provide an update on FINRA's remote inspection (the "Remote Inspection Proposal") and residential supervisory location (the "RSL Proposal") proposed rule filings. As a refresher, the SEC has instituted proceedings to determine whether to approve or disprove each of the proposals. The status of each proposal is described in detail below.

- **Remote Inspection Proposal**: As described in the below December 21st e-mail, on December 19th, FINRA amended the Remote Inspection Proposal in response to several comments received in response to the SEC's institution of proceedings. The amendment was intended to address comments by NASAA, which had argued that the original proposal did not contain adequate controls to protect against investor harm. The comment period for the amendment closed on January 12th. On January 23rd, FINRA filed a letter extending the SEC's time to consider the proposal until **April 12, 2023**.

- **RSL Proposal**: In a letter filed on December 9, 2022, FINRA responded to comments received in response to the SEC's institution of proceedings and noted that it determined not to amend the proposal in response to the comments. On January 23rd, FINRA filed a letter extending the SEC's time to consider the proposal until **March 30, 2023.**

Please reach out to any one of us with any questions or comments.

Regards,

Cliff

EVERSHEDS SUTHERLAND

From: Kirsch, Clifford <CliffordKirsch@eversheds-sutherland.us>
Sent: Wednesday, December 21, 2022 12:44 PM
To: Committee of Annuity Insurers <CommitteeofAnnuityInsurers@eversheds-sutherland.us>
Cc: Arnold, Eric <EricArnold@eversheds-sutherland.us>; Mount, Andrew <AndrewMount@eversheds-sutherland.us>
Subject: Update FINRA Remote Inspections

Hi, all—We wanted to provide an update on FINRA's remote inspections rule filing. On December 19th, FINRA filed a Notice of Partial Amendment No. 1 to Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision) ("Remote Inspection Proposal"). FINRA's amendment to the Remote Inspection Proposal (the "SM.18 Amendment") is intended to address several comments received in response to the SEC's Order Instituting Proceedings, including those by NASAA, which had argued that the original proposal did not contain adequate controls to protect against investor harm. Comments to the SM.18 Amendment will be due 21 days after it is filed in the Federal Register. As of today, it has not been filed.

Below is a summary of the changes to the Remote Inspection Proposal contemplated by FINRA through the SM.18 Amendment.

- **Additional Risk Assessment Factors:** The Remote Inspection Proposal required firms to develop a reasonable, risk-based approach to using remote inspections and conduct and document a risk assessment for each office or location for which remote inspections would be conducted.
    - The SM.18 Amendment would add a non-exclusive list of factors that a firm must consider when conducting its risk-based assessment of each office or location, including: (1) the volume and nature of customer complaints; (2) the volume and nature of outside business activities, particularly investment-related; (3) the volume and complexity of products offered; (4) the nature of the customer base, including vulnerable adult investors; (5) whether associated persons are subject to heightened supervision; (6) failures by associated persons to comply with the member's written supervisory procedures; and (7) any recordkeeping violations. Consistent with FINRA Rule 3110.12, firms must conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk locations or where there are "red flags."
- **Expansion of Firm Ineligibility Factors and Conditions:** The Remote Inspection Proposal excluded certain firms from participating in the pilot program if the activities of the member firm were more likely to raise investor protection concerns – such as the firm being designated as a Restricted Firm under FINRA Rule 4111 or a Taping Firm under Rule 3170.
    - The SM.18 Amendment would add additional criteria that would deem a firm ineligible from participating in the pilot program, including firms that: (1) receive a notice from FINRA under Rule 9557 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); (2) have or become suspended by FINRA; (3) had their FINRA membership become effective within the prior 12 months; or (4) have been found within the past three years by the SEC or FINRA to have violated Rule 3110(c) (Internal Inspections).
    - The SM.18 Amendment would also add additional conditions and controls with respect to firms' books and records and surveillance and technology tools.

- During the period the firm is participating in the pilot program, the firm would be required to have a recordkeeping system to make and keep current, and preserve records required to be made and kept current under applicable securities laws, FINRA rules, and the firm's own WSPs. Further, the firm would not be able to maintain or preserve any records (either physically or electronically) at the location subject to remote supervision and would be required to ensure that it has prompt access to all records.

- With regard to the firm's risk assessment (discussed above), firms would be required to "determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each such office or location." The SM.18 Amendment lists a number of specific tools that a firm would have to evaluate, including: (1) firm-wide tools such as an electronic recordkeeping system, electronic surveillance of e-mails and correspondence, etc.; (2) tools specific to the office or location based on activities of the associated persons at said location; and (3) secure network connections and effective cybersecurity protocols.

- **Expansion of Office and/or Location Ineligibility Factors**: The Remote Inspection Proposal originally excluded certain office locations from participating in the pilot program, including office locations where an associated person at the location is or becomes: (1) subject to a mandatory heightened supervisory plan; (2) statutorily disqualified (unless such disqualified person has been approved to associate with a member and is not subject to a mandatory heightened supervisory plan); (3) subject to Rule 1017(a)(7); or (4) required to provide a "yes" response to any item in Questions 14A(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D, and 14E on Form U4.

    - The SM.18 Amendment would add additional criteria that would deem an office location ineligible from participating in the pilot program, including office locations where an associated person at the location: (1) is or becomes subject to a disciplinary action taken by the member that is or was reportable under Rule 4530(a)(2); (2) is a part of the member's trading desk (e.g., engaging in market making activities or having authority to enter proprietary trades on behalf of the member or as agent for other parties); or (3) handles customers' funds or securities.

    - The SM.18 Amendment would also the following eligibility criteria for an office or location to participate in the pilot program: (1) electronic communications are made through the firm's electronic system; (2) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110; and (3) no books and records of the member required to be made and kept current and preserved are physically or electronically maintained and preserved at such office or location.

- **FINRA Discretion to Make a Determination in the Public Interest:** The SM.18 Amendment would add a new provision that would allow FINRA to make a determination in the public interest and for the protection of investors that a member is no longer eligible to participate in the proposed pilot program if the member fails to comply with the requirements of Rule 3110.18.

We will continue to review the SM.18 amendment and also monitor for its publication in the Federal Register. We will be back to the Committee with any thoughts about a possible comment letter and any other noteworthy developments. In the meantime, please do not hesitate to reach out with questions or to discuss.

Wishing everyone happy holidays and all the best in 2023!

Regards,
Cliff

From: Kirsch, Clifford <CliffordKirsch@eversheds-sutherland.us>
Sent: Friday, December 16, 2022 9:31 AM
To: Committee of Annuity Insurers <CommitteeofAnnuityInsurers@eversheds-sutherland.us>
Cc: Arnold, Eric <EricArnold@eversheds-sutherland.us>; Mount, Andrew <AndrewMount@eversheds-sutherland.us>
Subject: Committee Comment Letter - FINRA Remote Inspections; Status FINRA Remote Office Filings

As a follow-up to our e-mail below, we want to let you know that on December 7th, we filed the attached comment letter on behalf of the Committee in response to the SEC's Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .18 (Remote Inspections Pilot Program) under FINRA Rule 3110 (Supervision). The comment letter supports the SEC's approval of FINRA's proposed remote inspection pilot program and pushes back against several points made in a comment letter by NASAA. Rebuttal comments are due on or before December 31, 2022.

We also wanted to provide the Committee with an update on FINRA's remote supervisory location proposal (the "RSL Proposal"). The Committee submitted a comment letter in response to the SEC's Order Instituting Proceedings regarding the RSL Proposal on November 25, 2022. Rebuttal comments were due on December 9th. On December 9th, FINRA filed a rebuttal letter in which it notes that five comment letters (from the Committee, FSI, PIABA, NASAA, and Two Sigma Securities) were filed in response to the SEC's Order Instituting Proceedings. FINRA's rebuttal letter primarily pushes back on comments from NASAA that the RSL Proposal did not include appropriate safeguards and conditions around which firms and firm offices could qualify for the RSL office designation.

We will keep you updated on the status of each of these rule proposals. Please let us know if you have any questions.

Regards,
Cliff

From: Kirsch, Clifford <cliffordkirsch@eversheds-sutherland.com>
Sent: Monday, December 5, 2022 9:31 AM
To: Committee of Annuity Insurers <committeeofannuityinsurers@eversheds-sutherland.com>
Cc: Arnold, Eric <ericarnold@eversheds-sutherland.com>; Mount, Andrew <andrewmount@eversheds-sutherland.com>
Subject: Draft Committee Comment Letter - FINRA Remote Inspections

As a follow-up to our e-mail below, attached is a draft Committee comment letter in response to the SEC's order instituting proceedings to determine whether to approve or disapprove FINRA's proposal to add new Supplementary Material .18 to FINRA Rule 3110, which would establish a voluntary, three-year remote inspection pilot program (the "Remote Inspections Proposal"). The comment letter is substantially similar to the Committee comment letter filed last week in response to the RSL Proposal.

Comments on the Remote Inspections Proposal are due to the SEC by December 7, 2022. **We would appreciate if Committee members would provide us with any comments by tomorrow, Tuesday December 6th at Noon ET.**

EVERSHEDS SUTHERLAND

Please contact us if you have any questions or would like to discuss.

Regards,
Cliff

From: Kirsch, Clifford <CliffordKirsch@eversheds-sutherland.us>
Sent: Monday, November 28, 2022 12:57 PM
To: Committee of Annuity Insurers <CommitteeofAnnuityInsurers@eversheds-sutherland.us>
Cc: Arnold, Eric <EricArnold@eversheds-sutherland.us>; Mount, Andrew <AndrewMount@eversheds-sutherland.us>
Subject: Committee Comment Letter Filed - FINRA Residential Supervisory Location Proposal

As a follow-up to our e-mail below, we note that on Wednesday November 23rd we filed the attached comment letter on behalf of the Committee in response to the SEC's Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (the "RSL Proposal"). The comment letter supports the SEC's approval of FINRA's proposed rule change and takes issue with several points made in a comment letter by NASAA.

As we have previously discussed with the Committee, the SEC has also instituted proceedings to determine whether to approve or disapprove FINRA's proposal to add new Supplementary Material .18 to FINRA Rule 3110, which would establish a voluntary, three-year remote inspection pilot program (the "Remote Inspections Proposal"). As noted on a previous Committee call, we plan to prepare a similar comment letter with regard to the Remote Inspections Proposal. We will share a draft with the Committee in the next few days. **Comments on the Remote Inspections Proposal are due to the SEC by December 7, 2022**.

Please contact any one of us with questions or to discuss.

Regards,
Cliff

From: Kirsch, Clifford <CliffordKirsch@eversheds-sutherland.us>
Sent: Monday, November 21, 2022 8:44 PM
To: Committee of Annuity Insurers <CommitteeofAnnuityInsurers@eversheds-sutherland.us>
Cc: Arnold, Eric <EricArnold@eversheds-sutherland.us>; Mount, Andrew <AndrewMount@eversheds-sutherland.us>
Subject: Draft Committee Comment Letter - FINRA Residential Supervisory Location Proposal

As previously reported and as discussed on today's broker-dealer and adviser regulatory update call, the SEC has issued orders to institute proceedings to determine whether to approval or disapprove: (1) a proposed rule to add new Supplementary Material .19 ("SM.19") to FINRA Rule 3110, which would establish the Residential Supervisory Location classification for associated persons' private residences (the "RSL Proposal"); and (2) a proposed rule to add new Supplementary Material .18 ("SM.18") to FINRA Rule 3110, which would establish a voluntary, three-year remote inspection pilot program.

Comments on the RSL Proposal are due by Friday November 25, 2022. As mentioned on today's call, we have prepared a short comment letter that both reiterates the points made in the Committee's original comment letter and takes issue with several points made in a comment letter by the North American Securities Administrators Association ("NASAA") – which has asked the SEC to disapprove the proposed rule change. **We are aiming to file the comment letter with the SEC by the end of the day on Wednesday November 23rd and would appreciate any Committee member feedback by end of day on Tuesday November 22nd.**

EVERSHEDS SUTHERLAND

Please contact us if you have any questions or comments.

Regards,
Cliff