

# Legal Update

## FINRA Announces Effective Dates for Remote Inspections Pilot Program & Residential Supervisory Location Rules; COVID-19 Relief Ends

The Financial Industry Regulatory Authority, Inc. ("FINRA") announced via Regulatory Notice 24-02 (the "Notice") the effective dates and other important timeframes for new FINRA Rules 3110.18 (Remote Inspections Pilot Program) and 3110.19 (Residential Supervisory Location).<sup>1</sup> Moreover, FINRA announced the end date of the COVID-19-related regulatory relief set forth in FINRA Regulatory Notice 20-08 (the "Notice 20-08 Relief") with respect to the obligation of firms to maintain current information for employment addresses on Form U4 and branch offices on Form BR.<sup>2</sup> Below are the key dates relating to the initial implementation of these changes.

### Key Dates

**Notice 20-08 Relief end date: May 31, 2024**

***Firms relying on the Notice 20-08 Relief must file amendments to Forms U4 and BR, or file initial Forms BR, by July 1, 2024.***

**FINRA Rule 3110.19 effective date: June 1, 2024**

**FINRA Rule 3110.18 effective date: July 1, 2024**

For a comprehensive list of implementation-related dates and timeframes for FINRA Rules 3110.18 and 3110.19, and the end date of the Notice 20-08 Relief, please see the Appendix to this Legal Update.

## FINRA RULE 3110.18 - REMOTE INSPECTIONS PILOT PROGRAM (EFFECTIVE JULY 1, 2024)

FINRA Rule 3110.18 establishes a voluntary, three-year remote inspections pilot program (“Pilot Program”) to allow eligible firms, subject to specified terms, to satisfy their FINRA Rule 3110(c)(1) inspection obligation with respect to qualified branch offices, including offices of supervisory jurisdiction (“OSJs”) and non-branch locations, *remotely* – *i.e.*, without on-site visits to such offices/locations.

Firms that participate in the Pilot Program (“Firm Participants”) may conduct remote inspections starting on July 1, 2024. Importantly, firms will no longer be able to rely on FINRA Rule 3110.17 (Temporary Relief to Allow Remote Inspections for Calendar Years 2020, 2021, 2022, 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program, if Approved, or June 30, 2024) to fulfill their FINRA Rule 3110(c)(1) obligations. Thus, firms that are ineligible under FINRA Rule 3110.18 or that do not elect to participate in the Pilot Program in any given Pilot Year<sup>3</sup> will not be able to conduct any remote inspections during such Pilot Year.

Firm Participants should prepare to comply with FINRA Rule 3110.18’s conditions. For example, in addition to FINRA Rule 3110.18’s data and information requirements (as described below), the rule requires that firms *conduct and document a risk assessment for each office/location* prior to electing a remote inspection for that office/location (rather than an on-site inspection). The rule sets forth a non-exhaustive list of factors that a Firm Participant must consider. FINRA Rule 3110.18 also requires that Firm Participants establish, maintain and enforce written supervisory procedures (“WSPs”) regarding remote inspections.

### **Open Enrollment & Opt-Out Notification Periods**

Firms must affirmatively elect to participate in the Pilot Program by providing an opt-in notice to FINRA, and, once enrolled, must affirmatively elect to withdraw from the program by providing an opt-out notice to FINRA. For Pilot Year 1 (which runs July 1, 2024 through December 31, 2024), the open enrollment period to join the Pilot Program is June 1, 2024 through June 26, 2024. The table below shows the deadlines by which firms must opt in or opt out of the Pilot Program for each Pilot Year:

<b>Pilot Year</b>	<b>Deadline to Opt In / Join</b>	<b>Deadline to Opt Out / Withdraw</b>
1	June 26, 2024	N/A
2	December 27, 2024	December 27, 2024
3	December 27, 2025	December 27, 2025
4	December 27, 2026	December 27, 2026

A Firm Participant that does not provide an opt-out notification by the applicable deadline will be deemed to have elected and agreed to participate for the duration of the subsequent Pilot Year. The manner and format of opt-in and opt-out notices will be released by FINRA in subsequent guidance.

## **Data and Information Requirement**

Firms that participate in the Pilot Program for any amount of time will be required to submit the following data and information to FINRA:

- Quarterly data for each Pilot Year as specified in FINRA Rule 3110.18(h)(1)(A) – (F), which includes: (i) the number of offices/locations with an inspection completed during the calendar quarter (including distinguishing between on-site vs. remote inspections); and (ii) the number of offices/locations where findings were identified and the number of those findings, as well as a list of the “significant findings” (such term is discussed further below);
- WSPs related to remote inspections;
- For a firm participating in Pilot Year 1, additional inspection data and information covering January 1, 2024 through June 30, 2024 (*i.e.*, the period preceding the effective date of FINRA Rule 3110.18), including a list of “significant findings”<sup>4</sup> from inspections completed during this period; and
- Using best efforts and acting in good faith, calendar year 2019 inspection data and information.

FINRA plans to publish additional guidance outlining the operational processes for compliance with the data and information requirements of FINRA Rules 3110.18 and 3110.19 (as further described below).

### **FINRA RULE 3110.19 - RESIDENTIAL SUPERVISORY LOCATION (EFFECTIVE JUNE 1, 2024)**

FINRA Rule 3110.19 allows the private residence at which an associated person engages in specified supervisory activities (referred to as a “Residential Supervisory Location” or “RSL”) to be treated as a non-branch location, subject to certain safeguards and limitations set forth in the rule. As a non-branch location, each RSL will be subject to periodic inspections (presumed to be at least every three years), rather than the annual inspections currently required for an OSJ and a “supervisory branch office.”

To rely on the RSL designation under FINRA Rule 3110.19, the firm and the associated person at each location must meet certain conditions and eligibility requirements. Notably, among these requirements, the firm must *conduct and document a risk assessment for each office/location* before designating such office/location as an RSL. The firm must also provide a list of its RSLs to FINRA on a quarterly basis (specifically, by the 15<sup>th</sup> day of the month following each calendar quarter).

With respect to the initial implementation of FINRA Rule 3110.19, firms may start using the RSL designation on June 1, 2024. Each such firm’s first RSL list is due to FINRA on October 15, 2024. This first RSL list must include all locations that the firm designated as an RSL during the period of June 1, 2024 through September 30, 2024.

FINRA will make available in FINRA Gateway a technical process through which firms will be able to identify their RSLs and provide their quarterly RSL lists to FINRA. Currently, FINRA expects this process to be ready by May 31, 2024. FINRA also plans to publish guidance detailing the operational process for the submission of the quarterly RSL list to FINRA.

## **NOTICE 20-08 RELIEF (ENDS MAY 31, 2024; FORMS U4 & BR MUST BE UPDATED BY JULY 1, 2024)**

Beginning June 1, 2024, firms must resume their obligations to: (i) maintain updated Form U4 information regarding the office of employment address for registered persons who relocated due to COVID-19; and (ii) submit or update branch office applications on Form BR for any office locations or space-sharing arrangements established as a result of COVID-19 that have not otherwise been registered or updated with FINRA through Form BR. In each case, the required form must be filed with FINRA (and other applicable regulators) not later than July 1, 2024.

## **POTENTIAL FILINGS UNDER FINRA MEMBERSHIP APPLICATION PROGRAM (“MAP”) RULES**

As a result of the implementation of FINRA Rule 3110.19 and the end of the Notice 20-08 Relief, firms may experience an increase in the number of their respective offices/locations (registered and unregistered). In this regard, firms must assess whether any such increase constitutes a “material change in business operations”, potentially requiring a “continuing membership application” pursuant to FINRA Rule 1017(a)(5). This assessment should include consideration of whether the contemplated changes fall within the permitted increases in the number of offices (registered or unregistered) set forth in the “safe harbor” for business expansions, FINRA IM-1011-1, provided a member firm is eligible to rely on the safe harbor.<sup>5</sup> If a firm is unable to rely on the harbor, it must determine whether, based on the facts and circumstances and in consideration of certain factors discussed in Notice to Members 00-73 of the former National Association of Securities Dealers, Inc., the contemplated changes are material. In this regard, the firm may seek guidance from FINRA’s MAP Group through the materiality consultation process.

## **Practical Considerations**

Firms should start preparing for the end of the Notice 20-08 Relief as well as compliance with FINRA Rules 3110.18 and 3110.19 as soon as possible, including the collection and analysis of data sets as well as tasks that may be high volume and/or manually intensive.

Gathering Form U4 and Form BR data for all impacted personnel/locations, and processing that information into form updates, may prove to be a significant burden on resources for some firms. Moreover, conducting and documenting a risk assessment for each office/location that potentially will be subject to remote inspection and/or designated as an RSL can be a significant undertaking for some firms.

Additionally, firms must prepare to address the rules’ data reporting requirements, including reporting lists of “significant findings” (including with respect to findings from internal inspections conducted during Pilot Year 1, but before FINRA Rule 3110.18’s effective date (*i.e.*, January 1, 2024 through June 30, 2023)). While FINRA Rule 3110.18(h)(1) defines the term “finding” to mean a discovery made during an inspection that led to a remedial action or was listed on the member’s inspection report, the rule does not define the term “significant” finding. In this regard, FINRA stated in its rule filing with the SEC that a “significant” finding is:

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[O]ne that should prompt the firm to take further action that could include escalation to the appropriate channels at the firm for further review, the result of which may be enhanced monitoring or surveillance of a particular event or activity through more frequent inspections (remotely or on-site), on an announced or unannounced basis, of the office or location, or other targeted reviews of the root cause of the finding. Examples of some findings that may prompt escalation or further internal review by the appropriate firm personnel include, among other things, the use of unapproved communication mediums, customer complaints, or undisclosed outside business activities or private securities transactions.<sup>6</sup>

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FINRA stated that Firm Participants “should have the agency to assess their significant findings and report them to FINRA.”<sup>7</sup>

Finally, firms will need to consider whether any contemplated increase in offices/locations may require a approval from FINRA MAP, as described above. The “materiality” analysis raises a number of practical and regulatory considerations that should be carefully analyzed. Moreover, interpretive questions remain regarding the implementation of the new rules.

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## Appendix

### KEY DATES FOR THE IMPLEMENTATION OF FINRA RULES 3110.18 AND 3110.19, AND THE END OF NOTICE 20-08 RELIEF

Dates	Description
<b>May 31, 2024</b>	<p>End of <b>Notice 20-08 Relief</b>. Starting on June 1, 2024, firms previously relying on the Notice 20-08 Relief must comply with the 30-day timeframe under the FINRA By-Laws for filing/amending Forms U4 and BR with respect to updates to office information.<sup>8</sup></p> <p><b>FINRA Rule 3110.19</b> – Release of FINRA Gateway functionality for firms to identify their RSLs and meet the obligation to provide their quarterly RSL lists to FINRA in accordance with FINRA Rule 3110.19(d).</p>
<b>June 1, 2024</b>	<p><b>FINRA Rule 3110.19</b> effective date. This is the first day that a firm may use the RSL designation.</p>
<b>June 1, 2024 through June 26, 2024</b>	<p><b>FINRA Rule 3110.18</b> – Period in which a firm may elect to participate in the Pilot Program for Pilot Year 1 (July 1, 2024 through December 31, 2024) by providing an “opt-in notice” to FINRA.</p>
<b>July 1, 2024</b>	<p><b>FINRA Rule 3110.18</b> effective date. This is the first day a Firm Participant may conduct a remote inspection of eligible offices/locations under the specified terms and conditions of FINRA Rule 3110.18.</p> <p>Additionally, starting on July 1, 2024, firms can no longer rely on FINRA Rule 3110.17 to conduct remote inspections to satisfy FINRA Rule 3110(c)(1).</p>
<b>October 15, 2024</b>	<p><b>FINRA Rule 3110.18</b> – Date by which Firm Participants’ first set of data and information for Pilot Year 1 must be provided to FINRA. This includes Pilot Year 1’s third quarter 2024 data regarding: (i) the number of offices/locations with an inspection completed during the calendar quarter; (ii) the number of such offices/locations that were inspected remotely vs. on-site; (iii) the number of such offices/locations where findings were identified and the number of those findings, as well as a list of the significant findings. Firms must also provide their WSPs related to remote inspections.</p> <p><b>FINRA Rule 3110.19</b> – Date by which firms must submit their first RSL list to FINRA. This first list must include all locations a firm designates as RSLs during the period of June 1, 2024 through September 30, 2024.</p>

Dates	Description
<b>December 27, 2024</b>	<b>FINRA Rule 3110.18</b> – Date by which a Firm Participant must affirmatively withdraw from the Pilot Program for Pilot Year 2 by providing an “opt-out notice” to FINRA. If a Firm Participant does not provide the opt-out notice by this notification deadline, such firm will be automatically deemed to have elected and agreed to participate in the Pilot Program for Pilot Year 2.
<b>December 31, 2024</b>	<b>FINRA Rule 3110.18</b> – Date by which a Firm Participant in Pilot Year 1 must provide FINRA: (i) data covering January 1, 2024 through June 30, 2024; and (ii) data for 2019, if available (acting in good faith using best efforts).

For more information about the topics discussed in this Legal Update, please contact any of the following authors.



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<sup>1</sup> [FINRA Regulatory Notice 24-02 \(Branch Office Registration, Designation and Inspections\)](#) (Jan. 23, 2024). The rule text for FINRA Rules 3110.18 and 3110.19 is available [here](#).

<sup>2</sup> See [FINRA Regulatory Notice 20-08 \(Business Continuity Planning\)](#) (Mar. 9, 2020), in which FINRA announced the temporary suspension of requirements to: (i) maintain updated Form U4 information regarding office of employment address for registered persons who temporarily relocate due to COVID-19; and (ii) submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements.

<sup>3</sup> FINRA Rule 3110.18(l) defines the term “Pilot Year” to mean the following:

- (1) Pilot Year 1 is the period beginning on July 1, 2024 and ending on December 31 of the same year;
- (2) Pilot Year 2 means the calendar year period following Pilot Year 1, beginning on January 1 and ending on December 31;
- (3) Pilot Year 3 means the calendar year period following Pilot Year 2, beginning on January 1 and ending on December 31; and

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(4) If applicable, where Pilot Year 1 covers a period that is less than a full calendar year, then Pilot Year 4 means the period following Pilot Year 3, beginning on January 1 and ending on June 30, 2027.

<sup>4</sup> See *id.*

<sup>5</sup> See FINRA IM-1011-1 (Safe Harbor for Business Expansions) (“IM-1011-1”). IM-1011-1 is not available to any member that has disciplinary history or that has a membership agreement that contains a specific restriction as to the number of associated persons involved in sales, number of offices (registered or unregistered) or number of markets made. For these purposes, “disciplinary history” means a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Sections 15(b)(4)(E) and 15(c) of the Securities Exchange Act of 1934 (the “Exchange Act”); Section 17(a) of the Securities Act of 1933; Exchange Act Rules 10b-5 and 15g-1 through 15g-9; FINRA Rules 2010 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, frontrunning, trading ahead of research reports or excessive markups), 2020, 2111, 2121, 2150, 4330, 3110 (failure to supervise only), 5210, and 5230; and Rules G-19, G-30, and G-37(b) and (c) of the Municipal Securities Rulemaking Board; and all predecessor rules of the National Association of Securities Dealers to such FINRA rules.

<sup>6</sup> FINRA, Notice of Filing of a Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision), Exchange Act Release No. 97398 (Apr. 28, 2023), 88 FR 28620, 28632 (May 4, 2023).

<sup>7</sup> *Id.*

<sup>8</sup> Specifically, Article V, Section 2(c) of the FINRA By-Laws requires that each registered person’s Form U4 be kept current at all times by supplementary amendments not later than 30 days after learning of the facts or circumstances giving rise to the amendment, or, if such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Exchange Act, not later than ten days after such disqualification occurs. Article IV, Section 8 of the FINRA By-Laws requires each firm to advise FINRA via a Form BR filing of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office not later than 30 days after the effective date of such change.