

**MEMO# 30993**

December 22, 2017

## **ICI Supports FINRA Proposal to Permit the Remote Inspection of "Qualifying Locations"; Comments Requested by January 4th**

[30993]

December 22, 2017 TO: Broker/Dealer Advisory Committee  
Principal Underwriters Working Group RE: ICI Supports FINRA Proposal to Permit the Remote Inspection of "Qualifying Locations"; Comments Requested by January 4th

As you may know, the Institute has long recommended that FINRA consider and accommodate the unique business of mutual fund underwriters when it imposes regulatory requirements on its members. This includes the regulatory requirements applicable to overseeing and inspecting the business locations of the regional distributors and wholesalers retained by a fund's underwriter, which are often personal residences. We are pleased, therefore, that FINRA has proposed to provide limited relief from its onsite inspection requirement.<sup>[1]</sup> FINRA's proposal is briefly summarized below. The Institute is planning to file the attached draft comment letter supporting the proposal.

Comments are due to FINRA no later than January 12, 2018. Accordingly, if you have any recommended revisions to the Institute's draft letter, please provide them by email to the undersigned **no later than the close of business on Thursday, January 4th.**

Comments should be sent to [tamara@ici.org](mailto:tamara@ici.org).

### **FINRA's Proposal**

FINRA has proposed to add new Supplementary Material .15 to Rule 3110, which governs supervision. While Rule 3110 currently requires the onsite inspection of all member locations, this new Supplementary Material will permit members to remotely inspect any "qualifying office." Generally speaking, the term "qualifying office" would be defined in Supplementary Material .15(b) as a location that: (1) does not have more than three associated persons conducting business at it; (2) is not held out to the public; (3) exclusively uses the member's authorized electronic systems and platforms to conduct business; (4) complies with any applicable recordkeeping requirements; (5) does not handle customer funds or securities; and (6) is not the location of a person with a disciplinary history. Also, the location must either: (1) not be required to be inspected annually; (2) be designated as an office of supervisory jurisdiction (OSJ) solely because of specified

supervisory activities; or (3) be designated as a branch office solely because of supervisory activities. As such, the personal residences of mutual fund distributors and wholesalers should fall within the proposed definition of qualifying office.

Members that take advantage of the flexibility of the new Supplementary Material are required to establish and maintain policies and procedures reasonably designed to (1) ensure the location satisfies the definition of qualifying office and (2) assess whether a remote inspection is reasonable for the location.[\[2\]](#)

## **ICI Support**

As noted above, the Institute plans to file a comment letter supporting the proposal. Our support is based on the proposal's impact on mutual fund underwriters and the flexibility it will provide them to remotely inspect the locations of their distributors and underwriters. The Institute's letter notes that there is no public purpose served by the current requirement to conduct onsite inspections of these locations. As a result, FINRA's proposal will appropriately balance FINRA's investor protection concerns with ensuring that FINRA's members have the flexibility necessary to properly oversee their operations.

Tamara K. Salmon  
Associate General Counsel

## [Attachment](#)

### **endnotes**

[\[1\]](#) See *Remote Branch Office Inspections*, FINRA Notice 17-38 (Nov. 13, 2017), which is available at:

[http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-17-38.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-38.pdf).

[\[2\]](#) Pursuant to FINRA's proposal, a member shall determine the reasonableness of remotely inspecting a particular location by considering the factors listed in FINRA Rule 3110.12. These factors are: the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to the location, and any indicators of irregularities or misconduct (i.e., "red flags").