

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 73

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

File No. * SR 2024 - * 44

Amendment No. (req. for Amendments *)

Filing by Miami International Securities Exchange, LLC.

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"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <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)		
-----------------------------------	--	--	--	--	--

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 *).

Proposal to amend MIAX Options Exchange Rulebook to adopt OSJ definition and RSL classification based on FINRA rules

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 * Tanya Last Name * Kitaigorovski

Title * AVP, Associate Counsel

E-mail * tkitaigorovski@MIAXGlobal.com

Telephone * (609) 413-5787 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Miami International Securities Exchange, L has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 11/25/2024 (Title *)

By Tanya Kitaigorovski AVP, Associate 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.

Tanya Kitaigorovski Date: 2024.11.25 12:30:18 -05'00'

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

SR-MIAX-2024-44- 19b4.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

SR-MIAX-2024-44 - 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 *

Add Remove View

--

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

Add Remove View

--

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

Add Remove View

--

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

SR-MIAX-2024-44 - Exhibit 5.docx

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 Proposed Rule Change**

(a) Miami International Securities Exchange, LLC (“MIAX” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to: (i) amend Rule 1306 (Branch Offices) to adopt the definition used by Financial Industry Regulatory Authority, Inc. (“FINRA”) of Office of Supervisory Jurisdiction (“OSJ”); (ii) amend Rule 1308 (Supervision of Accounts) to adopt FINRA’s inspection requirement for non-branch location; (iii) harmonize Rule 1308 (Supervision of Accounts) with certain changes by FINRA to FINRA Rule 3110 to permit eligible Members³ to participate in FINRA’s remote inspections program (“FINRA Pilot Program”);⁴ and (iv) adopt FINRA’s Residential Supervisory Location (“RSL”) classification.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the proposed amended rule text is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on January 19, 2024. Exchange staff will advise the Board of Directors of any action taken pursuant to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (“Remote Inspections Pilot Program Proposal”); Securities Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (“Remote Inspections Pilot Program Approval Order”) (SR-FINRA-2023-007).

delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Tanya Kitaigorovski, AVP, Associate Counsel, at (609) 413-5787.

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

a. Purpose

The Exchange proposes to (i) amend Rule 1306 to adopt FINRA's definition of OSJ; (ii) amend Rule 1308 to adopt FINRA's inspection requirement for non-branch location; (iii) harmonize Rule 1308 with certain changes by FINRA to FINRA Rule 3110 to permit eligible Members to participate in FINRA's Remote Inspections Pilot Program; and (iv) adopt FINRA's RSL classification. The proposed changes would harmonize the Exchange's office and other location inspection rules with those of FINRA and thus promote uniform inspection standards across the securities industry resulting in less burdensome and more efficient regulatory compliance for common members.⁵ Additionally, the proposed changes would allow Members who participate in FINRA's Remote Inspections Pilot Program to also satisfy the equivalent internal inspections requirements set out in Rule 1308. The Exchange notes that Exchange Rules 1306 and 1308 as proposed to be amended by this filing, are incorporated by reference into the rulebooks of the Exchange's affiliate MIAX PEARL, LLC ("MIAX Pearl"), MIAX Emerald, LLC ("MIAX Emerald"), and MIAX Sapphire, LLC ("MIAX Sapphire"). As such, the amendment to Exchange Rules 1306 and 1308 proposed herein will also apply to MIAX Pearl, MIAX Emerald, and MIAX Sapphire members.

⁵ Currently, all Exchange Members are also FINRA members.

Proposal to Adopt FINRA’s Definition of OSJ

The Exchange proposes to adopt paragraph (j) of Rule 1306 to adopt FINRA’s definition of OSJ. Currently, Exchange Rule 1306(a) only requires Members to file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office. FINRA Rule 3110.01 provides that a member’s main office location is required to be registered and designated as a branch office or OSJ if it meets the definitions of a “branch office” or “office of supervisory jurisdiction” as set forth in FINRA Rule 3110(f). The purpose of the proposed change is to harmonize Exchange Rule 1306 with FINRA Rule 3110.01 to provide that both branch offices and OSJs will be subject to the office registration requirements set forth in Exchange Rule 1306(a). The proposed Exchange Rule 1306(j) is substantively identical to FINRA Rule 3110(f)(1). The proposed definition of OSJ defined in Rule 1306(j) will read as follows:

“Office of Supervisory Jurisdiction” means any office of a member at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers’ funds or securities; (4) final acceptance (approval) of new accounts on behalf of the Member; (5) review and endorsement of customer orders; (6) final approval of retail communications for use by persons associated with the Member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or (7) responsibility for supervising the activities of persons associated with the Member at one or more other branch offices of the Member.

The Exchange proposes to add “offices of supervisory jurisdictions” to Exchange Rule 1306(a) as follows:

Every Member approved to do options business with the public under this Chapter shall file with the Exchange and keep current a list of each of its branch offices and offices of supervisory jurisdictions showing the location of each such office and the name of the manager of each such office.

Additionally, the Exchange proposes to add “OSJ” to Exchange Rule 1308(d)(1) and its subparagraph (i) to provide that both branch offices and OSJs that supervise one or more non-

branch locations must be inspected no less than once each calendar year. In the event that it has been demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy this Rule's requirements for a particular branch office or OSJ, the Member does not have inspect such office no less than once every calendar year. The proposed Rule 1308(d)(1) is substantively identical to FINRA Rule 3110(c)(1)(A). The purpose of the proposed change is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c), resulting in less burdensome and more efficient regulatory compliance for common members. The proposed rule change would enable Exchange Rule 1308 to continue to be incorporated into the agreement between the Exchange and FINRA to allocate regulatory responsibility for common rules (the "17d-2 Agreement"), thereby facilitating FINRA's performance of its regulatory performance on the 17d-2 Agreement.⁶

Proposal to Adopt FINRA's Inspection Requirement for Non-Branch Location

Next, the Exchange propose to amend Rule 1308(d)(3) to adopt FINRA's inspection requirement for non-branch location. Exchange Rule 1308 sets forth the main requirements for inspections. An inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place. Currently, Exchange Rule 1308(d) provides that each branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year⁷; and every branch office, without exception, must be inspected at

⁶ See Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012) (File No. S7-966). The 17d-2 Agreement includes a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable.

⁷ See Exchange Rule 1308(d)(1).

least once every three calendar-years.⁸ The Exchange proposes to amend Rule 1308(d)(3) to provide that each non-branch office should be inspected on a regular periodic schedule. The Member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers when establishing the schedule. In addition, the Member should have written supervisory and inspection procedures to set forth the schedule and an explanation regarding how the Member determined the frequency of the examination. FINRA Rule 3110(c) requires Members to inspect every branch office that supervises one or more non-branch locations at least annually, every branch office that does not supervise one or more non-branch locations at least every three years, and every non-branch location on a regular periodic schedule. The proposed Exchange Rule 1308(d)(3) is substantively identical to FINRA Rule 3110(c)(1)(C). The purpose of the proposed change is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c), resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance on the 17d-2 Agreement.⁹ The proposed Exchange Rule 1308(d)(3) will read as follows:

Each Member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the Member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The Member's written supervisory and inspection procedures shall set forth the schedule and an explanation regarding how the Member determined the frequency of the examination.

The Exchange proposes to amend the hierarchical headings in Exchange Rule 1308 so that subparagraphs (d)(3)-(5) will be renumbered as (d)(4)-(6). In addition, the Exchange

⁸ See Exchange Rule 1308(d)(2).

⁹ See supra note 6.

proposes to amend proposed renumbered subparagraph (d)(6) of Rule 1308 to replace certain internal cross references to other paragraphs of Rule 1308 in light of the hierarchical heading changes described above. In particular, the Exchange propose to amend the cross references contained in proposed renumbered subparagraph (d)(6) of Rule 1308 that are to subparagraphs (d)(4) and (d)(5), to now to be subparagraphs (d)(5) and (d)(6), respectively. The Exchange proposes to add the reference to subparagraph (d)(3) in the sentence describing Member complying with the requirements of the New York Stock Exchange or FINRA in proposed renumbered Rule 1308(d)(4). With the proposed changes, proposed renumbered Rule 1308(d)(4) will provide that a Member that complies with requirements of the New York Stock Exchange or FINRA that are substantially similar to the requirements in paragraphs (d)(1), (d)(2), and (d)(3) of Rule 1308 as well as other related requirements in paragraphs (e) and (f) of Rule 1308 will be deemed to have met inspection requirements set forth in Rule 1308.

Proposal to Adopt FINRA Remote Inspections Pilot Program

The Exchange proposes to adopt subparagraph (d)(7) of Rule 1308, which would provide that any Member that participates in the FINRA Remote Inspections Pilot Program¹⁰, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), would also satisfy the equivalent annual branch office inspections requirements in Exchange Rule 1308(d). This proposed rule change would supplant Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)), which allowed Members to fulfill any calendar year 2024 internal inspection obligations set forth in Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)) by conducting remote inspections of

¹⁰ See FINRA Rule 3110.18.

the applicable branch offices¹¹ or non-branch locations.¹² This temporary relief, which was analogous to relief that FINRA provided for, automatically sunset on June 30, 2024.¹³ As described below, adding proposed subparagraph (d)(7) of Rule 1308 would harmonize the Exchange's annual branch office inspections obligations for its Members with FINRA's comparable obligations for its members, thereby avoiding confusion to Members with respect to the applicability of participation in the FINRA Remote Inspections Pilot Program and compliance with Exchange Rule 1308. Additionally, because the proposed subparagraph (d)(7) of Rule 1308 would incorporate by reference FINRA Rule 3110.18, this rule change would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 Agreement.¹⁴

Standards for Supervision of Remote Offices

The responsibility of firms to supervise their associated persons is a critical component of broker-dealer regulation.¹⁵ Members must supervise all of their associated persons, regardless of their location, compensation or employment arrangement, or registration status. Exchange Rule 1308(d), which is substantially identical to FINRA Rule 3110(c), requires any Member, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and

¹¹ See Exchange Rule 1306(c).

¹² See Exchange Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)) (Temporary Relief to Allow Remote Inspections for Calendar Years 2021, 2022, 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program or June 30, 2024).

¹³ See Id. The equivalent temporary relief offered by FINRA also sunset on June 30, 2024. See FINRA Rule 3110.17

¹⁴ See supra note 6.

¹⁵ See generally SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) ("SLB 17") (SEC guidance on remote office supervision), available at <https://www.sec.gov/interps/legal/mrslb17.htm>; and Regulatory Notice 11-54 (November 2011) ("Notice 11-54") (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections).

regulations and Exchange rules, and that sets forth the minimum requirements for such supervisory system.¹⁶ The internal inspection obligation under Exchange Rule 1308(d) and FINRA Rule 3110(c) is one component of such system.

Exchange Rule 1308(d), as amended herein, sets forth three main requirements for inspections. First, an inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place: each branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year¹⁷; and every branch office, without exception, must be inspected at least once every three calendar-years.¹⁸ Second, written reports reflecting the results of such inspections are to be maintained with the Member for the longer of three years or until the next branch office inspection.¹⁹ Third, to prevent compromising the effectiveness of inspections due to conflicts of interest, the rule requires a Member to ensure that the person conducting the inspection is independent of the direct supervision and control of the branch office in question (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports).²⁰

Further, Rule 1306(i) sets out factors that should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations shall include, but not be limited to, the following:

¹⁶ See Exchange Rule 1308(d).

¹⁷ See Exchange Rule 1308(d)(1).

¹⁸ See Exchange Rule 1308(d)(2).

¹⁹ Id.

²⁰ Id.

(1) the firm's size; (2) the firm's organizational structure; (3) the scope of business activities; (4) the number and location of offices; (5) the number of associated persons assigned to a location; (6) the nature and complexity of products and services offered; (7) the volume of business done; (8) whether the location has a Series 9/10-qualified person on-site; (9) the disciplinary history of the registered persons or associated persons, including a review of such person's customer complaints and Forms U4 and U5; and (10) the nature and extent of a registered person's or associated person's outside business activities, whether or not related to the securities business. Rule 1306(h) further states that the written supervisory procedures pertaining to supervision of sales activities conducted at the associated person's primary residence and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with Exchange Rules.

Notably, all of the above requirements about supervision and inspections of branch offices reflected a business environment in which Members conducted in-person inspections of all of their offices.²¹

FINRA's Recent Attempts to Change the In-Person Inspection Requirements of Offices of Supervisory Jurisdiction, Branch Offices, and Non-Branch Locations

In the Remote Inspections Pilot Program Proposal, FINRA described its efforts during the past several years to offer its members the option of remotely conducting internal inspections of their OSJs, branch offices, and non-branch locations.²² As stated therein, FINRA believed that as more recordkeeping moved from paper to electronic records, and as more meetings were conducted virtually using platforms such as Zoom and WebEx, the burden on FINRA members

²¹ See SLB 17 and Notice 11-54, supra note 15.

²² See Remote Inspections Pilot Program Proposal, supra note 4.

of conducting in-person inspections for all their remote office locations became harder to justify.²³

Thus, when the COVID-19 pandemic required many securities industry professionals to work from home, FINRA implemented several forms of regulatory relief to its members, including introducing FINRA Rule 3110.17, which the Exchange also introduced as subparagraph (d)(5) of Exchange Rule 1308 (to be renumbered as Rule 1308(d)(6)), to permit remote internal inspections of their branch offices.

The pandemic accelerated the industry's adoption of a broad remote work environment and the Exchange 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 an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Securities and Exchange Commission ("SEC") 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.²⁴ The SEC approved the FINRA Remote Inspection Pilot Program Proposal in November 2023²⁵, and FINRA commenced the pilot program on July 1, 2024.²⁶

FINRA's Remote Inspections Pilot Program

²³ See Id.

²⁴ See Id.

²⁵ See Remote Inspections Pilot Program Approval Order, supra note 4.

²⁶ See FINRA Regulatory Notice 24-02.

FINRA's Remote Inspection Pilot Program builds on the terms of the temporary relief in FINRA Rule 3110.17, while requiring members to provide even more information about their remote inspections to allow FINRA to assess the overall impact and effectiveness of remote inspections.²⁷ The pilot program is designed to provide broader systemized information to supplement the information obtained through the FINRA examination process in an environment where offices and locations were closed. The information firms would be required to produce as a pilot program participant will help FINRA more accurately assess the overall impact and effectiveness of remote inspections.²⁸

FINRA's Remote Inspection Pilot Program includes, among other things, the following requirements for participating firms:

- Risk Assessment. Prior to electing a remote inspection for an office or location, participating firms must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.²⁹
- Written Supervisory Procedures for Remote Inspections. Participating firms must establish, maintain, and enforce written procedures that are reasonably designed for conducting remote inspections and reasonably designed to achieve compliance with applicable securities laws and regulations.³⁰
- Effective Supervisory System. Participating firms must have an effective supervisory system for remote inspections that will be held to the same standards of review (set forth under FINRA Rule 3110.12). Where a member's remote inspection of an office or

²⁷ See Remote Inspections Pilot Program Proposal, supra note 4.

²⁸ See Id.

²⁹ See FINRA Rule 3110.18(b).

³⁰ See FINRA Rule 3110.18(c).

location identifies any “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 on-site visit on an announced or unannounced basis.³¹

- **Documentation Requirement.** Participating firms must maintain and preserve a centralized record for each of the Pilot Years specified in the pilot program that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in FINRA Rule 3110.18(d). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.³²
- **Firm Level Requirements.** Participating firms must meet certain firm- level eligibility requirements to participate in the program set forth in FINRA Rule 3110.18(f)(1). For example, a firm cannot participate if it is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms with suspended or new (effective less than 12 months) FINRA memberships or that have been found by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate. Participating firms must also comply with firm- level conditions to participate in the program. For example, a firm must have a recordkeeping system that

³¹ See FINRA Rule 3110.18(d).

³² See FINRA Rule 3110.18(e).

keeps records current and promptly accessible, and that does not maintain physical or electronic records at the location subject to remote inspection. Additionally, participating firms must have firm-wide tools such as electronic recordkeeping systems, system security tools such as secure network connections and effective cybersecurity protocols, and tools specifically applied to each office or location based on the activities of associated persons, products offered, or any restrictions on the activity of the office or location.³³

- **Location Level Requirements.** Participating firms must exclude from participating in the program any locations that do not meet the location level eligibility criteria set forth in FINRA Rule 3110.18(g)(1) (e.g., the location includes: (i) persons subject to a disciplinary action, a statutory disqualification, or a mandated heightened supervisory plan; (ii) persons engaged in proprietary trading; or (iii) the handling of customer funds or securities). Additionally, eligible locations must use the firm's electronic communication system and may not maintain any original copies of books or records at the location.³⁴
- **Data and Information Collection Requirement.** Participating firms must collect and on a quarterly basis produce to FINRA data consisting of separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. This data must include information about the number of remote inspections conducted and any significant findings. Firms shall establish, maintain, and enforce written policies

³³ See FINRA Rule 3110.18(f).

³⁴ See FINRA Rule 3110.18(g).

and procedures that are reasonably designed to comply with the data collection and transmission requirements.³⁵

- Election to Participate in Remote Inspections Pilot Program. Participating firms must opt-in to the pilot program in a manner specified by FINRA.³⁶
- Failure to Satisfy Conditions and Determination of Ineligibility. Participating firms that fail to satisfy terms of the Remote Inspections Pilot Program will be ineligible to participate in the pilot program and return to conducting only on-site inspections.³⁷ FINRA may also make a determination to revoke a member's eligibility to participate if FINRA finds it to be in the public interest.³⁸
- Definitions of Pilot Year periods. Includes clarifications that Pilot Year 1 is the second half of 2024, and Pilot Year 4 is the first half of 2027.³⁹

Proposal

The Exchange now proposes to adopt subparagraph (d)(7) of Exchange Rule 1308. This proposed new paragraph reads as follows:

Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, Rule 1308(d)(1), (2), and (3) may satisfy such obligation by participating in the FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on [effective date] ("pilot period"), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this subparagraph will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.⁴⁰

³⁵ See FINRA Rule 3110.18(h).

³⁶ See FINRA Rule 3110.18(i).

³⁷ See FINRA Rule 3110.18(j).

³⁸ See FINRA Rule 3110.18(k).

³⁹ See FINRA Rule 3110.18(l).

⁴⁰ Proposed Exchange Rule 1308(d)(6).

As stated in proposed new Exchange Rule 1308(d)(7), any Member that participates in the FINRA Remote Inspections Pilot Program, thereby satisfying the annual branch office inspections requirements in FINRA Rule 3110(c), will satisfy the equivalent annual branch office inspections requirements in Exchange Rule 1308(d).

The Exchange is not proposing to add the entire FINRA Remote Inspections Pilot Program to its rules, because it would be unnecessarily duplicative and burdensome for Members to submit the data and information required as part of the Remote Inspections Pilot Program to both the Exchange and FINRA.⁴¹ The Exchange understands that adopting proposed paragraph (d)(7) of Exchange Rule 1308 would update Rule 1308 so that it remains substantially similar to FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement.⁴² As a result, regulatory responsibility for Exchange Rule 1308(d) would continue to be allocated to FINRA.

As noted above, all Members were temporarily eligible to conduct remote office inspections until June 30, 2024. This proposed rule change would allow those Members who have enrolled in FINRA's Remote Inspections Pilot Program to continue to use remote inspections as part of an effective supervisory system.⁴³ The Exchange believes this Remote Inspections Pilot Program is a reasonable alternative for firms to fulfill their Rule 1308(d)

⁴¹ Pursuant to this proposed rule change, Members will be required to collect and on a quarterly basis produce to FINRA data regarding its participation in the Remote Inspections Pilot Program. See FINRA Rule 3110.18(h). But Members will not be required to produce that information directly to the Exchange.

⁴² See supra note 6.

⁴³ The Exchange notes that any inspections conducted by its Members in the brief period between July 1, 2024 and the effective date of this filing will not satisfy Exchange Rule 1308(d), but believes this will not be an issue for its Members because the remote inspections process outlined in the pilot program is an ongoing process that cannot be completed in the few days between the start of the FINRA's pilot program and the effectiveness of this rule filing.

obligations while permitting FINRA to collect data as the regulatory authority in this area under the 17d-2 Agreement to assess the efficacy and long-term viability of a permanent remote office inspections program. The Exchange emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done in accordance with the FINRA Remote Inspections Pilot Program, or on-site, would be held to the existing standards of review under Exchange Rule 1308(d).⁴⁴

Adopt FINRA's RSL Classification

The Exchange proposes to adopt paragraph (d)(8) of Rule 1308, which would allow a location that is the private residence of a person associated with a Member where supervisory activities are conducted, including those described in proposed Rule 1306(j)(4) through (7) or Rule 1306(c)(2), that satisfies the conditions for designation as RSL set forth in FINRA Rule 3110.19 to also be considered a non-branch location (i.e., an unregistered office) for those activities under the Exchange rules. Without this proposed rule change, any private residence at which a person associated with a member conducts supervisory activities is subject to registration, an annual inspection and, in some cases, additional licensing requirements.⁴⁵ As described below, adding proposed paragraph (d)(8) of Rule 1308 would harmonize the Exchange's internal inspections obligations for its Members with FINRA's comparable obligations for its members, thereby avoiding confusion to Members with respect to the applicability of FINRA's new RSL designation with respect to compliance with Rule 1308(d).⁴⁶ Additionally, because proposed paragraph (d)(8) of Rule 1308 would incorporate by reference

⁴⁴ Those standards provide, in part that based on the factors set forth under Exchange Rule 1308(d)(6)(ii), Members "may need to provide for more frequent monitoring or oversight of that office or location."

⁴⁵ See Exchange Rules 1306(d) and 1308(d)(1).

⁴⁶ The Exchange notes that all Members are currently FINRA members.

FINRA Rule 3110.19, this rule change would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 agreement.⁴⁷

Background

Early in 2020, the COVID-19 pandemic prompted FINRA to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.⁴⁸ As mentioned above, FINRA subsequently adopted temporary relief to allow remote inspections of an OSJ, branch office, or non-branch location for calendar years 2020 and 2021⁴⁹; FINRA extended the temporary relief several times to include calendar years 2022, 2023, and the first half of 2024.⁵⁰ The Exchange, following FINRA, offered its Members the same temporary relief to allow remote inspections of OSJs, branch offices, and non-branch locations for calendar years 2021, 2022, 2023, and until June 30, 2024.⁵¹ FINRA replaced the temporary remote inspections

⁴⁷ See supra note 6.

⁴⁸ Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. See Regulatory Notice 20-08 (March 2020). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019).

⁴⁹ See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (SR-FINRA-2020-040).

⁵⁰ See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (SR-FINRA-2022-030); Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (SR-FINRA-2021-023); Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001); and Securities Exchange Act Release No. 98560 (September 27, 2023), 88 FR 68258 (October 3, 2023) (SR-FINRA-2023-012).

⁵¹ See Securities Exchange Act Release Nos. 90937 (January 15, 2021), 86 FR 6944 (January 25, 2021) (SR-MIAX-2021-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts, To Adopt Temporary Rules To Extend the Time by Which Members Must Complete Their Branch Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021); 94251 (February 15, 2022), 87 FR 9764 (February 22, 2022) (SR-MIAX-2022-09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 1308, Supervision of Accounts); 96867 (February 9, 2023), 88 FR 9919 (February 15, 2023) (SR-MIAX-2023-04) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change

relief with the Remote Inspections Pilot Program⁵² that impacts the internal inspections requirements of FINRA Rule 3110(c); the Exchange proposes to amend its supervision rules such that any Member that participates in the FINRA pilot shall be deemed to satisfy the equivalent internal inspection requirements in Exchange Rule 1308(d) as above.

In response to the pandemic, many private and government employers closed their offices and their employees continued with their work from alternative locations such as private residences. The Exchange, like FINRA, believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. Moreover, the technology advancements that facilitated the transition to working outside the conventional office setting on a broad scale have not only effected a profound change in lifestyle and workplace practices for member firms, but provided SROs such as FINRA and the Exchange an opportunity to consider aspects of their supervision rules that may benefit from modernization.⁵³ As such, the Exchange, like FINRA, believes measured changes to its regulatory approach would allow firms to effectively and more efficiently carry out their supervisory responsibilities to review the activities of each office or location while preserving investor protections.

Requirements to Register and Inspect Offices

To Amend Exchange Rule 1308, Supervision of Accounts); and 99548 (February 15, 2024), 89 FR 13386 (February 22, 2024) (SR-MIAX-2024-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1308 To Extend the Temporary Remote Inspection Relief for Members Through June 30, 2024).

⁵² See FINRA Rule 3110.18.

⁵³ See Securities Exchange Act Release No. 97237 (March 31, 2023), 88 FR 20568 n. 8 (April 6, 2023) (SR-FINRA-2023-006) (“FINRA RSL Proposal”) (describing FINRA’s “practice of periodically reviewing its rules to ensure they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes.”)

Exchange Rule 1308 requires a Member, regardless of size or type, to have a supervisory system for the activities of its associated persons. Proposed Exchange Rule 1306(a) would set forth the minimum requirements of a Member's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under paragraph (c) and proposed paragraph (j) of Exchange Rule 1306. Proposed Exchange Rule 1308(d) would require Members to inspect all offices and locations. The proposed rule would categorize offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.⁵⁴ The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, proposed Rule 1306(a) would require the registration as an OSJ or branch office of each location, that meets their respective definition under paragraph (c) and proposed paragraph (j) of Exchange Rule 1306, as described in more detail below.⁵⁵

An OSJ is a type of branch office. The Exchange defines a "branch office" as "any location where one or more associated persons of a Member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such[.]"⁵⁶ In addition, any location that is responsible for supervising the activities of persons associated with a Member at one or more non-branch locations of such Member is considered to be a branch office.⁵⁷ A location registered as a branch office must file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office⁵⁸, and is subject to an

⁵⁴ See proposed Exchange Rules 1308(d)(1), (2), and proposed paragraph (3).

⁵⁵ See Exchange Rule 1306(a).

⁵⁶ See Exchange Rule 1306(c).

⁵⁷ See Exchange Rule 1306(d).

⁵⁸ See Exchange Rule 1306(a).

inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.⁵⁹

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ. As described above, proposed paragraph (j) of Rule 1306 would define as any office of a member at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the Member; (5) review and endorsement of customer orders; (6) final approval of retail communications for use by persons associated with the Member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or (7) responsibility for supervising the activities of persons associated with the Member at one or more other branch offices of the Member.⁶⁰ Under the proposed rule change, each OSJ would need to be inspected at least annually.⁶¹

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Exchange Rule 1306(c) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.⁶² One such exclusion appears under

⁵⁹ See proposed Exchange Rules 1308(d)(1) and (2).

⁶⁰ See proposed Exchange Rules 1306(j)(1)-(7).

⁶¹ See proposed Exchange Rule 1308(d)(1).

⁶² See generally Rule 1306(c)(1) and Rule 1306(c)(4)-(7) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated

Exchange Rule 1306(c)(2) and exempts from registration as a branch office an associated person's primary residence subject to the following express conditions: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to all supervisory provisions of the Exchange's Rules; (6) electronic communications (e.g., email) are made through the Member's electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the Member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the Member; and (9) a list of the residence locations is maintained by the Member ("primary residence exclusion").⁶³ The second exclusion that pertains to a residential location appears under Rule 1306(c)(3) is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the Member complies with the provisions of (ii) through (viii) of Exchange Rule 1306(c) (2) ("non-primary residence exclusion").⁶⁴ In general, the non-

person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

⁶³ See Exchange Rule 1306(c)(2)(i)-(ix). The primary residence exclusion is also set forth in FINRA Rule 3110(f)(2)(A)(ii).

⁶⁴ See Exchange Rule 1306(c)(3).

primary residence exclusion typically refers to a vacation or second home.⁶⁵ Under the proposed rule change, a non-branch location would need to be inspected on a periodic schedule, presumed to be at least every three years.⁶⁶

Notwithstanding either of these two residential exclusions or the other exclusions listed under Exchange Rule 1306(c)(1)⁶⁷, a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the Member at one or more non-branch locations of the Member is considered an OSJ or (supervisory) branch office, respectively.⁶⁸ Consequently, such residential supervisory offices would be subject to registration, an annual inspection and, in some cases, additional licensing requirements.⁶⁹

FINRA Residential Supervisory Location Rule

Effective June 1, 2024, FINRA implemented a rule change that establishes a new RSL designation for a private residence at which an associated person engages in specified supervisory activities, subject to specified investor protection safeguards and limitations.⁷⁰ This new non-branch location designation targets the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

⁶⁵ See NASD [FINRA] Notice to Members 06-12 (March 2006).

⁶⁶ See proposed Exchange Rule 1308(d)(3).

⁶⁷ See generally Exchange Rule 1306(c)(1) and Exchange Rules 1306(c)(4)-(7).

⁶⁸ See proposed Exchange Rules 1306(j)(4)-(7).

⁶⁹ See proposed Exchange Rule 1308(d)(1) and Exchange Rule 1306(d).

⁷⁰ See FINRA Regulatory Notice 24-02.

As described in the FINRA RSL Proposal,⁷¹ the definition of an RSL is based largely on several existing aspects of FINRA Rule 3110(f) (and therefore on the functionally identical to Exchange Rule 1306). In particular, the RSL definition incorporates the existing supervisory functions appearing in the OSJ definition (FINRA Rule 3110(f)(1)) and branch office definition (FINRA Rule 3110(f)(2)(A)) with the existing residential exclusions set forth in the branch office definition to classify an RSL as a non-branch location. Under current Exchange rules, a private residence at which these supervisory functions occur must be registered as a branch office under Exchange Rule 1306(d), and inspected at least annually under proposed Exchange Rule 1308(d)(1). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under proposed Exchange Rule 1308(d)(3).⁷²

FINRA Rule 3110.19 incorporates some existing safeguards and limitations members must already satisfy to rely on the primary residence exclusion.⁷³ As described in the FINRA RSL Proposal, FINRA intends for the terms underlying the RSL designation to be interpreted consistently with their meaning in FINRA Rule 3110(f) and existing related guidance.⁷⁴ The requirements for designation of a location as an RSL, which are set forth in FINRA Rule 3110.19, include the following key elements:

- A location where supervisory activities are conducted shall be considered for those activities a non-branch location provided that⁷⁵:

⁷¹ See Securities Exchange Act Release No. 97237 (March 31, 2023), 88 FR 20568 n. 8 (April 6, 2023) (SR-FINRA-2023-006) (“FINRA RSL Proposal”).

⁷² See proposed Exchange Rule 1308(d)(3).

⁷³ See FINRA Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f., and i.

⁷⁴ See, e.g., NASD [FINRA] Notice to Members 06-12 (March 2006).

⁷⁵ See FINRA Rule 3110.19(a).

- only one associated person (or members of the same immediate family) may conduct business at the location⁷⁶;
- the location is not held out to the public as an office⁷⁷;
- the associated person does not meet with customers or prospective customers at the location⁷⁸;
- any sales activity that takes place at the location complies with the conditions set forth under FINRA Rule 3110(f)(2)(A)(ii) (the primary residence exclusion⁷⁹) or FINRA Rule 3110(f)(2)(A)(iii) (the non-primary residence exclusion⁸⁰)⁸¹;
- neither customer funds nor securities are handled at that location⁸²;
- the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person⁸³;
- the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with FINRA's supervision rule⁸⁴;

⁷⁶ See FINRA Rule 3110.19(a)(1).

⁷⁷ See FINRA Rule 3110.19(a)(2).

⁷⁸ See FINRA Rule 3110.19(a)(3).

⁷⁹ See Exchange Rule 1306(c)(2)(i)-(ix).

⁸⁰ See Exchange Rule 1306(c)(3).

⁸¹ See FINRA Rule 3110.19(a)(4).

⁸² See FINRA Rule 3110.19(a)(5).

⁸³ See FINRA Rule 3110.19(a)(6).

⁸⁴ See FINRA Rule 3110.19(a)(7).

- the associated person's electronic communications are made through the member's electronic system⁸⁵;
- the member must have a recordkeeping system to make and keep current, and preserve records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; such records are not physically or electronically maintained and preserved at the office or location; and the member has prompt access to such records⁸⁶; and
- the member must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each Residential Supervisory Location, and these tools may include but are not limited to: firm-wide tools such as, electronic recordkeeping system; electronic surveillance of e-mail and correspondence; electronic trade blotters; regular activity-based sampling reviews; and tools for visual inspections; tools specific to the RSL based on the activities of associated person assigned to the location, products offered, restrictions on the activity of the RSL; and system tools such as secure network connections and effective cybersecurity protocols.⁸⁷
- FINRA members shall not be eligible to designate an office or location as an RSL if, among other things, the FINRA member is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms

⁸⁵ See FINRA Rule 3110.19(a)(8).

⁸⁶ See FINRA Rule 3110.19(a)(9).

⁸⁷ See FINRA Rule 3110.19(a)(10).

with suspended or new (effective less than 12 months) FINRA memberships or that have been found within the past three years by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate.⁸⁸

- An office or location shall not be eligible for designation as an RSL if one or more associated persons at such office or location⁸⁹:
 - is a designated supervisor who has less than one year of direct supervisory experience with the member, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser⁹⁰;
 - is functioning as a principal for a limited period in accordance with FINRA Rule 1210.04⁹¹;
 - is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency⁹²;
 - is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under FINRA Rule 3110.19(c)(3) or otherwise as a condition to approval or permission for such association⁹³;

⁸⁸ See FINRA Rule 3110.19(b).

⁸⁹ See FINRA Rule 3110.19(c).

⁹⁰ See FINRA Rule 3110.19(c)(1).

⁹¹ See FINRA Rule 3110.19(c)(2).

⁹² See FINRA Rule 3110.19(c)(3).

⁹³ See FINRA Rule 3110.19(c)(4).

- 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 U4⁹⁴; or
- has been notified in writing that such associated person is now subject to, any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4 (Uniform Application for Securities Industry Registration or Transfer), by the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the MSRB or other self-regulatory organization, including FINRA; provided, however, such office or location may be designated or redesignated as an RSL subject to the requirements of FINRA Rule 3110.19 upon the earlier of: (i) the member’s receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.⁹⁵

⁹⁴ See FINRA Rule 3110.19(c)(5).

⁹⁵ See FINRA Rule 3110.19(c)(6).

- FINRA members that elect to designate an office or location of the member as an RSL shall provide FINRA with a current list of all locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format as FINRA may prescribe.⁹⁶
- FINRA members must conduct a risk assessment prior to designating an office or location as an RSL. Specifically, the FINRA member must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. The assessment must document the factors considered, including among others, whether the associated person at such office or location is now subject to: (1) customer complaints, taking into account the volume and nature of the complaints; (2) heightened supervision other than where such office or location is ineligible for RSL designation under FINRA Rule 3110.19(c)(3); (3) any failure to comply with the member's written supervisory procedures; (4) any recordkeeping violation; and (5) any regulatory communications from a Regulator, indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations. The FINRA member must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under FINRA Rule 3110(a), the member's supervisory system must take into consideration any indicators of irregularities

⁹⁶ See FINRA Rule 3110.19(d).

or misconduct (i.e., “red flags”) when designating an office or location as an RSL. Red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of FINRA Rule 3110.19 and the member should consider evidencing steps taken to address those red flags where appropriate.⁹⁷

Proposal

The Exchange proposes to adopt subparagraph (d)(8) of Exchange Rule 1308. This proposed new paragraph reads as follows:

Residential Supervisory Location. A location that is the private residence of a person associated with a Member where supervisory activities are conducted, including those described in Rule 1306(j)(4) through (7) or Rule 1306(c)(2), which satisfies the conditions for designation as a Residential Supervisory Location set forth in FINRA Rule 3110.19 shall also be considered a non-branch location for those activities pursuant to the Exchange Rules.⁹⁸

As stated in proposed new paragraph (d)(8) of Rule 1308, any location that a Member designates as an RSL pursuant to FINRA Rule 3110.19 shall also be considered a non-branch location for those activities pursuant to Exchange rules.

Pursuant to this proposed rule change, Members will be required to share information about designated RSLs with FINRA on a quarterly basis. The Exchange is not proposing to add the entire FINRA Residential Supervisory Location designation rule to its rules, because it would be unnecessarily duplicative and burdensome for Members to share the same quarterly RSL designation information with the Exchange. The Exchange understands that adopting paragraph (d)(8) of Rule 1308 would update Exchange Rule 1308 so that it remains substantially similar to

⁹⁷ See FINRA Rule 3110.19(e).

⁹⁸ See proposed paragraph (d)(8) of Rule 1308.

FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement. As a result, regulatory responsibility for Exchange Rule 1308 would continue to be allocated to FINRA.

The Exchange, like FINRA, believes that the current work environment merits a reevaluation of the regulatory benefit of requiring firms to designate a private residence, at which specified supervisory functions occur, as an OSJ or branch office. The Exchange's proposal to incorporate by reference FINRA's RSL designation is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised.

Separate and apart from the classification of the office or location and the attendant inspection obligations, Members will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable the Exchange and FINRA rules.⁹⁹ The Exchange, like FINRA, emphasizes that Members have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the Exchange and FINRA rules.¹⁰⁰

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁰¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

⁹⁹ See FINRA Rule 3110.12.

¹⁰⁰ See 15 U.S.C. 78o(b)(4)(E) and 15 U.S.C. 78o(b)(6)(A).

¹⁰¹ 15 U.S.C. 78f(b).

¹⁰² 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the definition of OSJ, the requirements for inspections of Members' all offices and locations, and designation of certain non-branch offices as RSL, with those of FINRA, on which they are based. As discussed in the Purpose section, because proposed Exchange Rules 1308(d)(7) and (8) would incorporate by reference FINRA Rule 3110.18 and 3110.19, the proposed rule changes would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 Agreement, resulting in less burdensome and more efficient regulatory compliance. Specifically, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules insofar as a Member's compliance with FINRA Rule 3110.18 and 3110.19 shall mean the Member would be also in compliance with Exchange Rule 1308, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces. Adopting the definition of OSJ is to harmonize Exchange Rule 1306 with FINRA Rule 3110.01 to provide that both branch offices and OSJs will be subject to the office registration requirements set forth in Exchange Rule 1306(a). Adopting FINRA's inspection requirement for non-branch locations is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c) so that a Member's compliance with FINRA Rule 3110(c) shall mean the Member would be also in compliance with Exchange Rule 1308(d). As such, the proposed rule changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the

mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.¹⁰³

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not designed to address any competitive issue but rather to provide greater harmonization among the Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁰⁴ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁰⁵ The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the

¹⁰³ 15 U.S.C. 78f(b)(5).

¹⁰⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁰⁵ 17 CFR 240.19b-4.

Commission may designate. In addition, the Exchange provided the Commission with 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.¹⁰⁶

The Exchange believes that this filing is non-controversial because it raises no novel issues and is consistent with FINRA rules previously approved by or filed with the Commission. In particular, the purpose of the proposed rule changes is to harmonize with and conform to FINRA rules. The Exchange believes that the proposal would promote the protection of investors as it will harmonize the Exchange's supervision rules with those of FINRA, which will simplify the oversight process conducted by FINRA. Moreover, the Exchange does not believe that the proposed rule changes would implicate competition at all because the proposed changes would align the Exchange's rules with those of FINRA, which will assist it in its oversight work done.

The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) of the Act¹⁰⁷ and Rule 19b-4(f)(6) thereunder.¹⁰⁸ The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because such waiver would allow the Exchange to immediately harmonize its supervision rule with the FINRA rule on which it is based without delay. Waiver of the operative delay would allow the Exchange to implement the proposed changes to its remote inspection rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and

¹⁰⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁰⁸ 17 CFR 240.19b-4(f)(6).

the Exchange rules, providing more uniform inspection standards across the securities industry, and helping to avoid confusion for Exchange Members that are also FINRA members.

The Exchange further believes that the proposed rule changes would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because it is substantially based on recent approved FINRA rule changes.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁰⁹ 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 Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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

The proposed rule changes are based on FINRA Rule 3110.18 and FINRA Rule 3110.19. Except for the conforming changes noted above, the proposed rules and their FINRA counterpart rules are substantially the same.

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.

¹⁰⁹ 17 CFR 240.19b-4(f)(6).

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MIAX-2024-44)

November __, 2024

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC to Amend Exchange Rule 1306, Branch Offices and Exchange Rule 1308, Supervision of Accounts, to Harmonize our Rules with FINRA Rules

Pursuant to the provisions of 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 November __, 2024, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to: (i) amend Rule 1306 (Branch Offices) to adopt the definition used by Financial Industry Regulatory Authority, Inc. (“FINRA”) of Office of Supervisory Jurisdiction (“OSJ”); (ii) amend Rule 1308 (Supervision of Accounts) to adopt FINRA’s inspection requirement for non-branch location; (iii) harmonize Rule 1308 (Supervision of Accounts) with certain changes by FINRA to FINRA Rule 3110 to permit eligible Members³ to participate in FINRA’s remote inspections program (“FINRA Pilot Program”);⁴ and (iv) adopt FINRA’s Residential Supervisory Location (“RSL”) classification.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (“Remote Inspections Pilot Program Proposal”); Securities Exchange Act Release No. 98982 (November 17, 2023),

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

The Exchange proposes to (i) amend Rule 1306 to adopt FINRA's definition of OSJ; (ii) amend Rule 1308 to adopt FINRA's inspection requirement for non-branch location; (iii) harmonize Rule 1308 with certain changes by FINRA to FINRA Rule 3110 to permit eligible Members to participate in FINRA's Remote Inspections Pilot Program; and (iv) adopt FINRA's RSL classification. The proposed changes would harmonize the Exchange's office and other location inspection rules with those of FINRA and thus promote uniform inspection standards across the securities industry resulting in less burdensome and more efficient regulatory compliance for common members.⁵ Additionally, the proposed changes would allow Members who participate in FINRA's Remote Inspections Pilot Program to also satisfy the equivalent internal inspections requirements set out in Rule 1308. The Exchange notes that Exchange Rules

88 FR 82464 (November 24, 2023) ("Remote Inspections Pilot Program Approval Order") (SR-FINRA-2023-007).

⁵ Currently, all Exchange Members are also FINRA members.

1306 and 1308 as proposed to be amended by this filing, are incorporated by reference into the rulebooks of the Exchange's affiliate MIAX PEARL, LLC ("MIAX Pearl"), MIAX Emerald, LLC ("MIAX Emerald"), and MIAX Sapphire, LLC ("MIAX Sapphire"). As such, the amendment to Exchange Rules 1306 and 1308 proposed herein will also apply to MIAX Pearl, MIAX Emerald, and MIAX Sapphire members.

Proposal to Adopt FINRA's Definition of OSJ

The Exchange proposes to adopt paragraph (j) of Rule 1306 to adopt FINRA's definition of OSJ. Currently, Exchange Rule 1306(a) only requires Members to file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office. FINRA Rule 3110.01 provides that a member's main office location is required to be registered and designated as a branch office or OSJ if it meets the definitions of a "branch office" or "office of supervisory jurisdiction" as set forth in FINRA Rule 3110(f). The purpose of the proposed change is to harmonize Exchange Rule 1306 with FINRA Rule 3110.01 to provide that both branch offices and OSJs will be subject to the office registration requirements set forth in Exchange Rule 1306(a). The proposed Exchange Rule 1306(j) is substantively identical to FINRA Rule 3110(f)(1). The proposed definition of OSJ defined in Rule 1306(j) will read as follows:

"Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the Member; (5) review and endorsement of customer orders; (6) final approval of retail communications for use by persons associated with the Member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or (7) responsibility for supervising the activities of persons associated with the Member at one or more other branch offices of the Member.

The Exchange proposes to add "offices of supervisory jurisdictions" to Exchange Rule 1306(a) as follows:

Every Member approved to do options business with the public under this Chapter shall file with the Exchange and keep current a list of each of its branch offices and offices of supervisory jurisdictions showing the location of each such office and the name of the manager of each such office.

Additionally, the Exchange proposes to add “OSJ” to Exchange Rule 1308(d)(1) and its subparagraph (i) to provide that both branch offices and OSJs that supervise one or more non-branch locations must be inspected no less than once each calendar year. In the event that it has been demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy this Rule’s requirements for a particular branch office or OSJ, the Member does not have inspect such office no less than once every calendar year. The proposed Rule 1308(d)(1) is substantively identical to FINRA Rule 3110(c)(1)(A). The purpose of the proposed change is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c), resulting in less burdensome and more efficient regulatory compliance for common members. The proposed rule change would enable Exchange Rule 1308 to continue to be incorporated into the agreement between the Exchange and FINRA to allocate regulatory responsibility for common rules (the “17d-2 Agreement”), thereby facilitating FINRA’s performance of its regulatory performance on the 17d-2 Agreement.⁶

Proposal to Adopt FINRA’s Inspection Requirement for Non-Branch Location

Next, the Exchange propose to amend Rule 1308(d)(3) to adopt FINRA’s inspection requirement for non-branch location. Exchange Rule 1308 sets forth the main requirements for inspections. An inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place. Currently, Exchange Rule 1308(d) provides that each

⁶ See Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012) (File No. S7-966). The 17d-2 Agreement includes a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable.

branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year⁷; and every branch office, without exception, must be inspected at least once every three calendar-years.⁸ The Exchange proposes to amend Rule 1308(d)(3) to provide that each non-branch office should be inspected on a regular periodic schedule. The Member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers when establishing the schedule. In addition, the Member should have written supervisory and inspection procedures to set forth the schedule and an explanation regarding how the Member determined the frequency of the examination. FINRA Rule 3110(c) requires Members to inspect every branch office that supervises one or more non-branch locations at least annually, every branch office that does not supervise one or more non-branch locations at least every three years, and every non-branch location on a regular periodic schedule. The proposed Exchange Rule 1308(d)(3) is substantively identical to FINRA Rule 3110(c)(1)(C). The purpose of the proposed change is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c), resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance on the 17d-2 Agreement.⁹ The proposed Exchange Rule 1308(d)(3) will read as follows:

Each Member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the Member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The Member's written supervisory and inspection procedures shall set forth the schedule and an explanation regarding how the Member determined the frequency of the examination.

⁷ See Exchange Rule 1308(d)(1).

⁸ See Exchange Rule 1308(d)(2).

⁹ See supra note 6.

The Exchange proposes to amend the hierarchical headings in Exchange Rule 1308 so that subparagraphs (d)(3)-(5) will be renumbered as (d)(4)-(6). In addition, the Exchange proposes to amend proposed renumbered subparagraph (d)(6) of Rule 1308 to replace certain internal cross references to other paragraphs of Rule 1308 in light of the hierarchical heading changes described above. In particular, the Exchange propose to amend the cross references contained in proposed renumbered subparagraph (d)(6) of Rule 1308 that are to subparagraphs (d)(4) and (d)(5), to now to be subparagraphs (d)(5) and (d)(6), respectively. The Exchange proposes to add the reference to subparagraph (d)(3) in the sentence describing Member complying with the requirements of the New York Stock Exchange or FINRA in proposed renumbered Rule 1308(d)(4). With the proposed changes, proposed renumbered Rule 1308(d)(4) will provide that a Member that complies with requirements of the New York Stock Exchange or FINRA that are substantially similar to the requirements in paragraphs (d)(1), (d)(2), and (d)(3) of Rule 1308 as well as other related requirements in paragraphs (e) and (f) of Rule 1308 will be deemed to have met inspection requirements set forth in Rule 1308.

Proposal to Adopt FINRA Remote Inspections Pilot Program

The Exchange proposes to adopt subparagraph (d)(7) of Rule 1308, which would provide that any Member that participates in the FINRA Remote Inspections Pilot Program¹⁰, thereby satisfying the internal inspections requirements in FINRA Rule 3110(c), would also satisfy the equivalent annual branch office inspections requirements in Exchange Rule 1308(d). This proposed rule change would supplant Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)), which allowed Members to fulfill any calendar year 2024 internal inspection obligations set forth in Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)) by conducting remote inspections of

¹⁰ See FINRA Rule 3110.18.

the applicable branch offices¹¹ or non-branch locations.¹² This temporary relief, which was analogous to relief that FINRA provided for, automatically sunset on June 30, 2024.¹³ As described below, adding proposed subparagraph (d)(7) of Rule 1308 would harmonize the Exchange's annual branch office inspections obligations for its Members with FINRA's comparable obligations for its members, thereby avoiding confusion to Members with respect to the applicability of participation in the FINRA Remote Inspections Pilot Program and compliance with Exchange Rule 1308. Additionally, because the proposed subparagraph (d)(7) of Rule 1308 would incorporate by reference FINRA Rule 3110.18, this rule change would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 Agreement.¹⁴

Standards for Supervision of Remote Offices

The responsibility of firms to supervise their associated persons is a critical component of broker-dealer regulation.¹⁵ Members must supervise all of their associated persons, regardless of their location, compensation or employment arrangement, or registration status. Exchange Rule 1308(d), which is substantially identical to FINRA Rule 3110(c), requires any Member, regardless of size or type, to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with the applicable securities laws and regulations and Exchange rules, and that sets forth the minimum requirements for such

¹¹ See Exchange Rule 1306(c).

¹² See Exchange Rule 1308(d)(5) (to be renumbered as Rule 1308(d)(6)) (Temporary Relief to Allow Remote Inspections for Calendar Years 2021, 2022, 2023, and Through the Earlier of the Effective Date of the Remote Inspections Pilot Program or June 30, 2024).

¹³ See *Id.* The equivalent temporary relief offered by FINRA also sunset on June 30, 2024. See FINRA Rule 3110.17

¹⁴ See *supra* note 6.

¹⁵ See generally SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) ("SLB 17") (SEC guidance on remote office supervision), available at <https://www.sec.gov/interps/legal/mrslb17.htm>; and Regulatory Notice 11-54 (November 2011) ("Notice 11-54") (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections).

supervisory system.¹⁶ The internal inspection obligation under Exchange Rule 1308(d) and FINRA Rule 3110(c) is one component of such system.

Exchange Rule 1308(d), as amended herein, sets forth three main requirements for inspections. First, an inspection of an office or location must occur on a designated frequency. The periodicity of the required inspection varies depending on the classification of the location or the nature of the activities that take place: each branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year¹⁷; and every branch office, without exception, must be inspected at least once every three calendar-years.¹⁸ Second, written reports reflecting the results of such inspections are to be maintained with the Member for the longer of three years or until the next branch office inspection.¹⁹ Third, to prevent compromising the effectiveness of inspections due to conflicts of interest, the rule requires a Member to ensure that the person conducting the inspection is independent of the direct supervision and control of the branch office in question (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports).²⁰

Further, Rule 1306(i) sets out factors that should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations shall include, but not be limited to, the following: (1) the firm's size; (2) the firm's organizational structure; (3) the scope of business activities; (4) the number and location of offices; (5) the number of associated persons assigned to a location;

¹⁶ See Exchange Rule 1308(d).

¹⁷ See Exchange Rule 1308(d)(1).

¹⁸ See Exchange Rule 1308(d)(2).

¹⁹ Id.

²⁰ Id.

(6) the nature and complexity of products and services offered; (7) the volume of business done; (8) whether the location has a Series 9/10-qualified person on-site; (9) the disciplinary history of the registered persons or associated persons, including a review of such person's customer complaints and Forms U4 and U5; and (10) the nature and extent of a registered person's or associated person's outside business activities, whether or not related to the securities business. Rule 1306(h) further states that the written supervisory procedures pertaining to supervision of sales activities conducted at the associated person's primary residence and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with Exchange Rules.

Notably, all of the above requirements about supervision and inspections of branch offices reflected a business environment in which Members conducted in-person inspections of all of their offices.²¹

FINRA's Recent Attempts to Change the In-Person Inspection Requirements of Offices of Supervisory Jurisdiction, Branch Offices, and Non-Branch Locations

In the Remote Inspections Pilot Program Proposal, FINRA described its efforts during the past several years to offer its members the option of remotely conducting internal inspections of their OSJs, branch offices, and non-branch locations.²² As stated therein, FINRA believed that as more recordkeeping moved from paper to electronic records, and as more meetings were conducted virtually using platforms such as Zoom and WebEx, the burden on FINRA members of conducting in-person inspections for all their remote office locations became harder to justify.²³

²¹ See SLB 17 and Notice 11-54, supra note 15.

²² See Remote Inspections Pilot Program Proposal, supra note 4.

²³ See Id.

Thus, when the COVID-19 pandemic required many securities industry professionals to work from home, FINRA implemented several forms of regulatory relief to its members, including introducing FINRA Rule 3110.17, which the Exchange also introduced as subparagraph (d)(5) of Exchange Rule 1308 (to be renumbered as Rule 1308(d)(6)), to permit remote internal inspections of their branch offices.

The pandemic accelerated the industry's adoption of a broad remote work environment and the Exchange 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 an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed the Remote Inspections Pilot Program Proposal with the Securities and Exchange Commission ("SEC") 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.²⁴ The SEC approved the FINRA Remote Inspection Pilot Program Proposal in November 2023²⁵, and FINRA commenced the pilot program on July 1, 2024.²⁶

FINRA's Remote Inspections Pilot Program

FINRA's Remote Inspection Pilot Program builds on the terms of the temporary relief in FINRA Rule 3110.17, while requiring members to provide even more information about their remote inspections to allow FINRA to assess the overall impact and effectiveness of remote

²⁴ See Id.

²⁵ See Remote Inspections Pilot Program Approval Order, supra note 4.

²⁶ See FINRA Regulatory Notice 24-02.

inspections.²⁷ The pilot program is designed to provide broader systemized information to supplement the information obtained through the FINRA examination process in an environment where offices and locations were closed. The information firms would be required to produce as a pilot program participant will help FINRA more accurately assess the overall impact and effectiveness of remote inspections.²⁸

FINRA's Remote Inspection Pilot Program includes, among other things, the following requirements for participating firms:

- Risk Assessment. Prior to electing a remote inspection for an office or location, participating firms must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.²⁹
- Written Supervisory Procedures for Remote Inspections. Participating firms must establish, maintain, and enforce written procedures that are reasonably designed for conducting remote inspections and reasonably designed to achieve compliance with applicable securities laws and regulations.³⁰
- Effective Supervisory System. Participating firms must have an effective supervisory system for remote inspections that will be held to the same standards of review (set forth under FINRA Rule 3110.12). Where a member's remote inspection of an office or location identifies any "red flags," the member may need to impose additional supervisory procedures for that office or location or may need to provide for more

²⁷ See Remote Inspections Pilot Program Proposal, supra note 4.

²⁸ See Id.

²⁹ See FINRA Rule 3110.18(b).

³⁰ See FINRA Rule 3110.18(c).

frequent monitoring of that office or location, including potentially a subsequent on-site visit on an announced or unannounced basis.³¹

- **Documentation Requirement.** Participating firms must maintain and preserve a centralized record for each of the Pilot Years specified in the pilot program that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in FINRA Rule 3110.18(d). A member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.³²
- **Firm Level Requirements.** Participating firms must meet certain firm-level eligibility requirements to participate in the program set forth in FINRA Rule 3110.18(f)(1). For example, a firm cannot participate if it is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms with suspended or new (effective less than 12 months) FINRA memberships or that have been found by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate. Participating firms must also comply with firm-level conditions to participate in the program. For example, a firm must have a recordkeeping system that keeps records current and promptly accessible, and that does not maintain physical or electronic records at the location subject to remote inspection. Additionally, participating firms must have firm-wide tools such as electronic recordkeeping systems, system

³¹ See FINRA Rule 3110.18(d).

³² See FINRA Rule 3110.18(e).

security tools such as secure network connections and effective cybersecurity protocols, and tools specifically applied to each office or location based on the activities of associated persons, products offered, or any restrictions on the activity of the office or location.³³

- **Location Level Requirements.** Participating firms must exclude from participating in the program any locations that do not meet the location level eligibility criteria set forth in FINRA Rule 3110.18(g)(1) (e.g., the location includes: (i) persons subject to a disciplinary action, a statutory disqualification, or a mandated heightened supervisory plan; (ii) persons engaged in proprietary trading; or (iii) the handling of customer funds or securities). Additionally, eligible locations must use the firm's electronic communication system and may not maintain any original copies of books or records at the location.³⁴
- **Data and Information Collection Requirement.** Participating firms must collect and on a quarterly basis produce to FINRA data consisting of separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. This data must include information about the number of remote inspections conducted and any significant findings. Firms shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements.³⁵

³³ See FINRA Rule 3110.18(f).

³⁴ See FINRA Rule 3110.18(g).

³⁵ See FINRA Rule 3110.18(h).

- Election to Participate in Remote Inspections Pilot Program. Participating firms must opt-in to the pilot program in a manner specified by FINRA.³⁶
- Failure to Satisfy Conditions and Determination of Ineligibility. Participating firms that fail to satisfy terms of the Remote Inspections Pilot Program will be ineligible to participate in the pilot program and return to conducting only on-site inspections.³⁷ FINRA may also make a determination to revoke a member's eligibility to participate if FINRA finds it to be in the public interest.³⁸
- Definitions of Pilot Year periods. Includes clarifications that Pilot Year 1 is the second half of 2024, and Pilot Year 4 is the first half of 2027.³⁹

Proposal

The Exchange now proposes to adopt subparagraph (d)(7) of Exchange Rule 1308. This proposed new paragraph reads as follows:

Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, Rule 1308(d)(1), (2), and (3) may satisfy such obligation by participating in the FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on [effective date] ("pilot period"), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this subparagraph will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.⁴⁰

As stated in proposed new Exchange Rule 1308(d)(7), any Member that participates in the FINRA Remote Inspections Pilot Program, thereby satisfying the annual branch office

³⁶ See FINRA Rule 3110.18(i).

³⁷ See FINRA Rule 3110.18(j).

³⁸ See FINRA Rule 3110.18(k).

³⁹ See FINRA Rule 3110.18(l).

⁴⁰ Proposed Exchange Rule 1308(d)(6).

inspections requirements in FINRA Rule 3110(c), will satisfy the equivalent annual branch office inspections requirements in Exchange Rule 1308(d).

The Exchange is not proposing to add the entire FINRA Remote Inspections Pilot Program to its rules, because it would be unnecessarily duplicative and burdensome for Members to submit the data and information required as part of the Remote Inspections Pilot Program to both the Exchange and FINRA.⁴¹ The Exchange understands that adopting proposed paragraph (d)(7) of Exchange Rule 1308 would update Rule 1308 so that it remains substantially similar to FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement.⁴² As a result, regulatory responsibility for Exchange Rule 1308(d) would continue to be allocated to FINRA.

As noted above, all Members were temporarily eligible to conduct remote office inspections until June 30, 2024. This proposed rule change would allow those Members who have enrolled in FINRA's Remote Inspections Pilot Program to continue to use remote inspections as part of an effective supervisory system.⁴³ The Exchange believes this Remote Inspections Pilot Program is a reasonable alternative for firms to fulfill their Rule 1308(d) obligations while permitting FINRA to collect data as the regulatory authority in this area under the 17d-2 Agreement to assess the efficacy and long-term viability of a permanent remote office inspections program. The Exchange emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done in accordance with the

⁴¹ Pursuant to this proposed rule change, Members will be required to collect and on a quarterly basis produce to FINRA data regarding its participation in the Remote Inspections Pilot Program. See FINRA Rule 3110.18(h). But Members will not be required to produce that information directly to the Exchange.

⁴² See supra note 6.

⁴³ The Exchange notes that any inspections conducted by its Members in the brief period between July 1, 2024 and the effective date of this filing will not satisfy Exchange Rule 1308(d), but believes this will not be an issue for its Members because the remote inspections process outlined in the pilot program is an ongoing process that cannot be completed in the few days between the start of the FINRA's pilot program and the effectiveness of this rule filing.

FINRA Remote Inspections Pilot Program, or on-site, would be held to the existing standards of review under Exchange Rule 1308(d).⁴⁴

Adopt FINRA's RSL Classification

The Exchange proposes to adopt paragraph (d)(8) of Rule 1308, which would allow a location that is the private residence of a person associated with a Member where supervisory activities are conducted, including those described in proposed Rule 1306(j)(4) through (7) or Rule 1306(c)(2), that satisfies the conditions for designation as RSL set forth in FINRA Rule 3110.19 to also be considered a non-branch location (i.e., an unregistered office) for those activities under the Exchange rules. Without this proposed rule change, any private residence at which a person associated with a member conducts supervisory activities is subject to registration, an annual inspection and, in some cases, additional licensing requirements.⁴⁵ As described below, adding proposed paragraph (d)(8) of Rule 1308 would harmonize the Exchange's internal inspections obligations for its Members with FINRA's comparable obligations for its members, thereby avoiding confusion to Members with respect to the applicability of FINRA's new RSL designation with respect to compliance with Rule 1308(d).⁴⁶ Additionally, because proposed paragraph (d)(8) of Rule 1308 would incorporate by reference FINRA Rule 3110.19, this rule change would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 agreement.⁴⁷

Background

⁴⁴ Those standards provide, in part that based on the factors set forth under Exchange Rule 1308(d)(6)(ii), Members "may need to provide for more frequent monitoring or oversight of that office or location."

⁴⁵ See Exchange Rules 1306(d) and 1308(d)(1).

⁴⁶ The Exchange notes that all Members are currently FINRA members.

⁴⁷ See supra note 6.

Early in 2020, the COVID-19 pandemic prompted FINRA to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis.⁴⁸ As mentioned above, FINRA subsequently adopted temporary relief to allow remote inspections of an OSJ, branch office, or non-branch location for calendar years 2020 and 2021⁴⁹; FINRA extended the temporary relief several times to include calendar years 2022, 2023, and the first half of 2024.⁵⁰ The Exchange, following FINRA, offered its Members the same temporary relief to allow remote inspections of OSJs, branch offices, and non-branch locations for calendar years 2021, 2022, 2023, and until June 30, 2024.⁵¹ FINRA replaced the temporary remote inspections relief with the Remote Inspections Pilot Program⁵² that impacts the internal inspections

⁴⁸ Among the temporary regulatory relief provided, FINRA adopted relief pertaining to branch office registration requirements through Form BR (Uniform Branch Office Registration Form) and FINRA Rule 3110(c) inspection requirements. Specifically, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. See Regulatory Notice 20-08 (March 2020). With respect to inspection obligations, FINRA adopted temporary Rule 3110.16 that provided additional time for member firms to complete their calendar year 2020 inspection obligations. See Securities Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019).

⁴⁹ See Securities Exchange Act Release No. 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (SR-FINRA-2020-040).

⁵⁰ See Securities Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (SR-FINRA-2022-030); Securities Exchange Act Release No. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (SR-FINRA-2021-023); Securities Exchange Act Release No. 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001); and Securities Exchange Act Release No. 98560 (September 27, 2023), 88 FR 68258 (October 3, 2023) (SR-FINRA-2023-012).

⁵¹ See Securities Exchange Act Release Nos. 90937 (January 15, 2021), 86 FR 6944 (January 25, 2021) (SR-MIAX-2021-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts, To Adopt Temporary Rules To Extend the Time by Which Members Must Complete Their Branch Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021); 94251 (February 15, 2022), 87 FR 9764 (February 22, 2022) (SR-MIAX-2022-09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 1308, Supervision of Accounts); 96867 (February 9, 2023), 88 FR 9919 (February 15, 2023) (SR-MIAX-2023-04) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts); and 99548 (February 15, 2024), 89 FR 13386 (February 22, 2024) (SR-MIAX-2024-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1308 To Extend the Temporary Remote Inspection Relief for Members Through June 30, 2024).

⁵² See FINRA Rule 3110.18.

requirements of FINRA Rule 3110(c); the Exchange proposes to amend its supervision rules such that any Member that participates in the FINRA pilot shall be deemed to satisfy the equivalent internal inspection requirements in Exchange Rule 1308(d) as above.

In response to the pandemic, many private and government employers closed their offices and their employees continued with their work from alternative locations such as private residences. The Exchange, like FINRA, believes this model will endure, irrespective of the state of the pandemic. The pandemic accelerated reliance on technological advances in surveillance and monitoring capabilities and prompted significant changes in lifestyles and work habits, including the growing expectation for workplace flexibility. Moreover, the technology advancements that facilitated the transition to working outside the conventional office setting on a broad scale have not only effected a profound change in lifestyle and workplace practices for member firms, but provided SROs such as FINRA and the Exchange an opportunity to consider aspects of their supervision rules that may benefit from modernization.⁵³ As such, the Exchange, like FINRA, believes measured changes to its regulatory approach would allow firms to effectively and more efficiently carry out their supervisory responsibilities to review the activities of each office or location while preserving investor protections.

Requirements to Register and Inspect Offices

Exchange Rule 1308 requires a Member, regardless of size or type, to have a supervisory system for the activities of its associated persons. Proposed Exchange Rule 1306(a) would set forth the minimum requirements of a Member's supervisory system that includes registering a location as an OSJ or branch office that meets the definitions under paragraph (c) and proposed

⁵³ See Securities Exchange Act Release No. 97237 (March 31, 2023), 88 FR 20568 n. 8 (April 6, 2023) (SR-FINRA-2023-006) (“FINRA RSL Proposal”) (describing FINRA’s “practice of periodically reviewing its rules to ensure they continue to promote their intended investor protection objectives in a manner that is effective and efficient, without imposing undue burdens, particularly in light of technological, industry and market changes.”)

paragraph (j) of Exchange Rule 1306. Proposed Exchange Rule 1308(d) would require Members to inspect all offices and locations. The proposed rule would categorize offices or locations as an OSJ or supervisory branch office, a non-supervisory branch office, or a non-branch location.⁵⁴ The requirements to register, inspect and have a principal on-site vary based on the categorization. Specifically, proposed Rule 1306(a) would require the registration as an OSJ or branch office of each location, that meets their respective definition under paragraph (c) and proposed paragraph (j) of Exchange Rule 1306, as described in more detail below.⁵⁵

An OSJ is a type of branch office. The Exchange defines a “branch office” as “any location where one or more associated persons of a Member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such[.]”⁵⁶ In addition, any location that is responsible for supervising the activities of persons associated with a Member at one or more non-branch locations of such Member is considered to be a branch office.⁵⁷ A location registered as a branch office must file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office⁵⁸, and is subject to an inspection at least every three years, unless it is a supervisory branch office in which case it is subject to at least an annual inspection.⁵⁹

Depending upon the functions occurring at a branch office, it may be further classified as an OSJ. As described above, proposed paragraph (j) of Rule 1306 would define as any office of

⁵⁴ See proposed Exchange Rules 1308(d)(1), (2), and proposed paragraph (3).

⁵⁵ See Exchange Rule 1306(a).

⁵⁶ See Exchange Rule 1306(c).

⁵⁷ See Exchange Rule 1306(d).

⁵⁸ See Exchange Rule 1306(a).

⁵⁹ See proposed Exchange Rules 1308(d)(1) and (2).

a member at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the Member; (5) review and endorsement of customer orders; (6) final approval of retail communications for use by persons associated with the Member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or (7) responsibility for supervising the activities of persons associated with the Member at one or more other branch offices of the Member.⁶⁰ Under the proposed rule change, each OSJ would need to be inspected at least annually.⁶¹

However, subject to specified conditions, an office or location may be deemed a “non-branch location,” and excluded from registration as a branch office. Currently, Exchange Rule 1306(c) sets forth seven exclusions—often referred to as unregistered offices or non-branch locations—of which two pertain to residential locations.⁶² One such exclusion appears under Exchange Rule 1306(c)(2) and exempts from registration as a branch office an associated person's primary residence subject to the following express conditions: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same

⁶⁰ See proposed Exchange Rules 1306(j)(1)-(7).

⁶¹ See proposed Exchange Rule 1308(d)(1).

⁶² See generally Rule 1306(c)(1) and Rule 1306(c)(4)-(7) which, in addition to the primary residence and the non-primary residence exclusions that are further described, excludes the following from the definition of “branch office”: (1) any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (2) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (3) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (4) the Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (5) a temporary location established in response to the implementation of a business continuity plan.

immediate family, conduct business at the location; (2) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (3) neither customer funds nor securities are handled at that location; (4) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (5) the associated person's correspondence and communications with the public are subject to all supervisory provisions of the Exchange's Rules; (6) electronic communications (e.g., email) are made through the Member's electronic system; (7) all orders are entered through the designated branch office or an electronic system established by the Member that is reviewable at the branch office; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the Member; and (9) a list of the residence locations is maintained by the Member ("primary residence exclusion").⁶³ The second exclusion that pertains to a residential location appears under Rule 1306(c)(3) is any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided that the Member complies with the provisions of (ii) through (viii) of Exchange Rule 1306(c) (2) ("non-primary residence exclusion").⁶⁴ In general, the non-primary residence exclusion typically refers to a vacation or second home.⁶⁵ Under the proposed rule change, a non-branch location would need to be inspected on a periodic schedule, presumed to be at least every three years.⁶⁶

⁶³ See Exchange Rule 1306(c)(2)(i)-(ix). The primary residence exclusion is also set forth in FINRA Rule 3110(f)(2)(A)(ii).

⁶⁴ See Exchange Rule 1306(c)(3).

⁶⁵ See NASD [FINRA] Notice to Members 06-12 (March 2006).

⁶⁶ See proposed Exchange Rule 1308(d)(3).

Notwithstanding either of these two residential exclusions or the other exclusions listed under Exchange Rule 1306(c)(1)⁶⁷, a primary or non-primary residence location that is responsible for either the supervisory activities set forth in the OSJ definition or for supervising the activities of persons associated with the Member at one or more non-branch locations of the Member is considered an OSJ or (supervisory) branch office, respectively.⁶⁸ Consequently, such residential supervisory offices would be subject to registration, an annual inspection and, in some cases, additional licensing requirements.⁶⁹

FINRA Residential Supervisory Location Rule

Effective June 1, 2024, FINRA implemented a rule change that establishes a new RSL designation for a private residence at which an associated person engages in specified supervisory activities, subject to specified investor protection safeguards and limitations.⁷⁰ This new non-branch location designation targets the subset of residential locations that have many of the attributes contained in the primary residence exclusion, but must be registered as an OSJ or branch office because of the supervisory functions taking place there.

As described in the FINRA RSL Proposal,⁷¹ the definition of an RSL is based largely on several existing aspects of FINRA Rule 3110(f) (and therefore on the functionally identical to Exchange Rule 1306). In particular, the RSL definition incorporates the existing supervisory functions appearing in the OSJ definition (FINRA Rule 3110(f)(1)) and branch office definition (FINRA Rule 3110(f)(2)(A)) with the existing residential exclusions set forth in the branch

⁶⁷ See generally Exchange Rule 1306(c)(1) and Exchange Rules 1306(c)(4)-(7).

⁶⁸ See proposed Exchange Rules 1306(j)(4)-(7).

⁶⁹ See proposed Exchange Rule 1308(d)(1) and Exchange Rule 1306(d).

⁷⁰ See FINRA Regulatory Notice 24-02.

⁷¹ See Securities Exchange Act Release No. 97237 (March 31, 2023), 88 FR 20568 n. 8 (April 6, 2023) (SR-FINRA-2023-006) (“FINRA RSL Proposal”).

office definition to classify an RSL as a non-branch location. Under current Exchange rules, a private residence at which these supervisory functions occur must be registered as a branch office under Exchange Rule 1306(d), and inspected at least annually under proposed Exchange Rule 1308(d)(1). By treating such location as a non-branch location, the private residence would become subject to inspections on a regular periodic schedule under proposed Exchange Rule 1308(d)(3).⁷²

FINRA Rule 3110.19 incorporates some existing safeguards and limitations members must already satisfy to rely on the primary residence exclusion.⁷³ As described in the FINRA RSL Proposal, FINRA intends for the terms underlying the RSL designation to be interpreted consistently with their meaning in FINRA Rule 3110(f) and existing related guidance.⁷⁴ The requirements for designation of a location as an RSL, which are set forth in FINRA Rule 3110.19, include the following key elements:

- A location where supervisory activities are conducted shall be considered for those activities a non-branch location provided that⁷⁵:
 - only one associated person (or members of the same immediate family) may conduct business at the location⁷⁶;
 - the location is not held out to the public as an office⁷⁷;
 - the associated person does not meet with customers or prospective customers at the location⁷⁸;

⁷² See proposed Exchange Rule 1308(d)(3).

⁷³ See FINRA Rule 3110(f)(2)(A)(ii)a., b., c., d., e., f., and i.

⁷⁴ See, e.g., NASD [FINRA] Notice to Members 06-12 (March 2006).

⁷⁵ See FINRA Rule 3110.19(a).

⁷⁶ See FINRA Rule 3110.19(a)(1).

⁷⁷ See FINRA Rule 3110.19(a)(2).

⁷⁸ See FINRA Rule 3110.19(a)(3).

- any sales activity that takes place at the location complies with the conditions set forth under FINRA Rule 3110(f)(2)(A)(ii) (the primary residence exclusion⁷⁹) or FINRA Rule 3110(f)(2)(A)(iii) (the non-primary residence exclusion⁸⁰)⁸¹;
- neither customer funds nor securities are handled at that location⁸²;
- the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person⁸³;
- the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with FINRA's supervision rule⁸⁴;
- the associated person's electronic communications are made through the member's electronic system⁸⁵;
- the member must have a recordkeeping system to make and keep current, and preserve records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own written supervisory procedures under Rule 3110; such records are not physically or electronically maintained and preserved at the office or location; and the member has prompt access to such records⁸⁶; and

⁷⁹ See Exchange Rule 1306(c)(2)(i)-(ix).

⁸⁰ See Exchange Rule 1306(c)(3).

⁸¹ See FINRA Rule 3110.19(a)(4).

⁸² See FINRA Rule 3110.19(a)(5).

⁸³ See FINRA Rule 3110.19(a)(6).

⁸⁴ See FINRA Rule 3110.19(a)(7).

⁸⁵ See FINRA Rule 3110.19(a)(8).

⁸⁶ See FINRA Rule 3110.19(a)(9).

- the member must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each Residential Supervisory Location, and these tools may include but are not limited to: firm-wide tools such as, electronic recordkeeping system; electronic surveillance of e-mail and correspondence; electronic trade blotters; regular activity-based sampling reviews; and tools for visual inspections; tools specific to the RSL based on the activities of associated person assigned to the location, products offered, restrictions on the activity of the RSL; and system tools such as secure network connections and effective cybersecurity protocols.⁸⁷
- FINRA members shall not be eligible to designate an office or location as an RSL if, among other things, the FINRA member is designated as: (i) Restricted Firm under FINRA Rule 4111 or (ii) a Taping Firm under FINRA Rule 3170. Additionally, firms with suspended or new (effective less than 12 months) FINRA memberships or that have been found within the past three years by the SEC or FINRA to have violated FINRA Rule 3110(c) are ineligible to participate.⁸⁸
- An office or location shall not be eligible for designation as an RSL if one or more associated persons at such office or location⁸⁹:
 - is a designated supervisor who has less than one year of direct supervisory experience with the member, or an affiliate or subsidiary of the member that is registered as a broker-dealer or investment adviser⁹⁰;

⁸⁷ See FINRA Rule 3110.19(a)(10).

⁸⁸ See FINRA Rule 3110.19(b).

⁸⁹ See FINRA Rule 3110.19(c).

⁹⁰ See FINRA Rule 3110.19(c)(1).

- is functioning as a principal for a limited period in accordance with FINRA Rule 1210.04⁹¹;
- is subject to a mandatory heightened supervisory plan under the rules of the SEC, FINRA or state regulatory agency⁹²;
- is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under FINRA Rule 3110.19(c)(3) or otherwise as a condition to approval or permission for such association⁹³;
- 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 U4⁹⁴; or
- has been notified in writing that such associated person is now subject to, any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4 (Uniform Application for Securities Industry Registration or Transfer), by the SEC, an SRO, including FINRA, or state securities commission (or agency or office performing like functions) (each, a “Regulator”) expressly alleging they have failed reasonably to supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the

⁹¹ See FINRA Rule 3110.19(c)(2).

⁹² See FINRA Rule 3110.19(c)(3).

⁹³ See FINRA Rule 3110.19(c)(4).

⁹⁴ See FINRA Rule 3110.19(c)(5).

Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the MSRB or other self-regulatory organization, including FINRA; provided, however, such office or location may be designated or redesignated as an RSL subject to the requirements of FINRA Rule 3110.19 upon the earlier of: (i) the member's receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.⁹⁵

- FINRA members that elect to designate an office or location of the member as an RSL shall provide FINRA with a current list of all locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format as FINRA may prescribe.⁹⁶
- FINRA members must conduct a risk assessment prior to designating an office or location as an RSL. Specifically, the FINRA member must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person assigned to that office or location. The assessment must document the factors considered, including among others, whether the associated person at such office or location is now subject to: (1) customer complaints, taking into account the volume and nature of the complaints; (2) heightened supervision other than where such office or location is ineligible for RSL designation under FINRA Rule 3110.19(c)(3); (3) any failure to comply with the member's written

⁹⁵ See FINRA Rule 3110.19(c)(6).

⁹⁶ See FINRA Rule 3110.19(d).

supervisory procedures; (4) any recordkeeping violation; and (5) any regulatory communications from a Regulator, indicating that the associated person at such office or location failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, “blue sheet” requests or other trading questionnaires, or examinations. The FINRA member must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under FINRA Rule 3110(a), the member’s supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., “red flags”) when designating an office or location as an RSL. Red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of FINRA Rule 3110.19 and the member should consider evidencing steps taken to address those red flags where appropriate.⁹⁷

Proposal

The Exchange proposes to adopt subparagraph (d)(8) of Exchange Rule 1308. This proposed new paragraph reads as follows:

Residential Supervisory Location. A location that is the private residence of a person associated with a Member where supervisory activities are conducted, including those described in Rule 1306(j)(4) through (7) or Rule 1306(c)(2), which satisfies the conditions for designation as a Residential Supervisory Location set forth in FINRA Rule 3110.19 shall also be considered a non-branch location for those activities pursuant to the Exchange Rules.⁹⁸

⁹⁷ See FINRA Rule 3110.19(e).

⁹⁸ See proposed paragraph (d)(8) of Rule 1308.

As stated in proposed new paragraph (d)(8) of Rule 1308, any location that a Member designates as an RSL pursuant to FINRA Rule 3110.19 shall also be considered a non-branch location for those activities pursuant to Exchange rules.

Pursuant to this proposed rule change, Members will be required to share information about designated RSLs with FINRA on a quarterly basis. The Exchange is not proposing to add the entire FINRA Residential Supervisory Location designation rule to its rules, because it would be unnecessarily duplicative and burdensome for Members to share the same quarterly RSL designation information with the Exchange. The Exchange understands that adopting paragraph (d)(8) of Rule 1308 would update Exchange Rule 1308 so that it remains substantially similar to FINRA Rule 3110, such that they remain common rules subject to the 17d-2 Agreement. As a result, regulatory responsibility for Exchange Rule 1308 would continue to be allocated to FINRA.

The Exchange, like FINRA, believes that the current work environment merits a reevaluation of the regulatory benefit of requiring firms to designate a private residence, at which specified supervisory functions occur, as an OSJ or branch office. The Exchange's proposal to incorporate by reference FINRA's RSL designation is intended to reflect a pragmatic balance between the hybrid workforce model and the parameters that should ensure that all locations, including residential locations, are appropriately supervised.

Separate and apart from the classification of the office or location and the attendant inspection obligations, Members will continue to have an ongoing obligation to supervise the activities of each associated person in a manner reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable the Exchange and FINRA rules.⁹⁹

⁹⁹ See FINRA Rule 3110.12.

The Exchange, like FINRA, emphasizes that Members have a statutory duty to supervise their associated persons, regardless of their location, compensation or employment arrangement, or registration status, in accordance with the Exchange and FINRA rules.¹⁰⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁰¹ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the definition of OSJ, the requirements for inspections of Members' all offices and locations, and designation of certain non-branch offices as RSL, with those of FINRA, on which they are based. As discussed in the Purpose section, because proposed Exchange Rules 1308(d)(7) and (8) would incorporate by reference FINRA Rule 3110.18 and 3110.19, the proposed rule changes would enable Exchange Rule 1308 to continue to be incorporated into the 17d-2 Agreement, resulting in less burdensome and more efficient regulatory compliance. Specifically, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules insofar as a Member's compliance with FINRA Rule 3110.18 and 3110.19 shall mean the Member would be also in compliance with Exchange Rule 1308, thus promoting the application of consistent regulatory standards with respect to rules that FINRA enforces. Adopting the definition of OSJ is to harmonize Exchange

¹⁰⁰ See 15 U.S.C. 78o(b)(4)(E) and 15 U.S.C. 78o(b)(6)(A).

¹⁰¹ 15 U.S.C. 78f(b).

¹⁰² 15 U.S.C. 78f(b)(5).

Rule 1306 with FINRA Rule 3110.01 to provide that both branch offices and OSJs will be subject to the office registration requirements set forth in Exchange Rule 1306(a). Adopting FINRA's inspection requirement for non-branch locations is to harmonize Exchange Rule 1308(d) with FINRA Rule 3110(c) so that a Member's compliance with FINRA Rule 3110(c) shall mean the Member would be also in compliance with Exchange Rule 1308(d). As such, the proposed rule changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.¹⁰³

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not designed to address any competitive issue but rather to provide greater harmonization among the Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory performance.

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

No written comments were either solicited or received.

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

¹⁰³ 15 U.S.C. 78f(b)(5).

Pursuant to Section 19(b)(3)(A) of the Act¹⁰⁴ and Rule 19b-4(f)(6)¹⁰⁵ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-44 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.

¹⁰⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁰⁵ 17 CFR 240.19b-4(f)(6).

All submissions should refer to file number SR-MIAX-2024-44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-MIAX-2024-44 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁰⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined;
Deleted text is in [brackets]

MIAX Options Exchange Rules

Rule 1306. Branch Offices

(a) Every Member approved to do options business with the public under this Chapter shall file with the Exchange and keep current a list of each of its branch offices and offices of supervisory jurisdictions showing the location of each such office and the name of the manager of each such office.

(b) – (i) (No Change.)

(j) Definition of Office of Supervisory Jurisdiction. “Office of Supervisory Jurisdiction” or “OSJ” means any office of a Member at which any one or more of the following functions take place:

(1) order execution or market making;

(2) structuring of public offerings or private placements;

(3) maintaining custody of customers’ funds or securities;

(4) final acceptance (approval) of new accounts on behalf of the Member;

(5) review and endorsement of customer orders;

(6) final approval of retail communications for use by persons associated with the Member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or

(7) responsibility for supervising the activities of persons associated with the Member at one or more other branch offices of the Member.

Rule 1308. Supervision of Accounts

(a) – (c) (No Change.)

(d) **Annual Branch Office Inspections.**

(1) Each branch office and OSJ that supervises one or more non-branch locations must be inspected no less often than once each calendar year unless:

(i) it has been demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy this Rule's requirements for a particular branch office or OSJ; or

(ii) (No change.)

(2) (No change.)

(3) Each Member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the Member shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The Member's written supervisory and inspection procedures shall set forth the schedule and an explanation regarding how the Member determined the frequency of the examination.

~~[(3)](4)~~ A Member that complies with requirements of the New York Stock Exchange or FINRA that are substantially similar to the requirements in paragraphs (d)(1), ~~[and] (d)(2), and (d)(3)~~ of this Rule as well as to related requirements in paragraphs (e) and (f) of this Rule will be deemed to have met such requirements.

~~[(4)](5)~~ Each Member obligated to complete an annual branch office inspection in calendar year 2020 pursuant to Rule 1308(d) will be deemed to have satisfied such obligation if the applicable inspection is completed on or before March 31, 2021.

~~[(5)](6)~~ Each Member obligated to conduct an inspection of a branch office or non-branch location in the calendar years specified in this Rule ~~[1308(d)(5)]1308(d)(6)~~ pursuant to Rule 1308(d), as applicable, may, subject to the requirements of Rule ~~[1308(d)(5)]1308(d)(6)~~, satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Rule ~~[1308(d)(4)]1308(d)(5)~~, inspections for calendar year 2020 must be completed on or before March 31, 2021, inspections for calendar year 2021 must be completed on or before December 31, 2021, inspections for calendar year 2022 must be completed on or before December 31, 2022, and inspections for calendar year 2023 must be completed 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 2024, a Member has the option to conduct those inspections remotely through June 30, 2024. Notwithstanding Rule ~~[1308(d)(5)]1308(d)(6)~~, a Member remains subject to the other requirements of Rule 1308(d).

(i) – (iii) (No change.)

(7) Remote Inspections Pilot Program. Members that are obligated to conduct an inspection of an office of supervisory jurisdiction, branch office or non-branch location pursuant to, as applicable, Rule 1308(d)(1), (2), and (3) may satisfy such obligation by participating in the

FINRA Remote Inspections Pilot Program, as set forth in FINRA Rule 3110.18. The FINRA Remote Inspections Pilot Program shall cover required inspections of such offices or locations for a period of three years starting on [effective date] (“pilot period”), and such pilot period shall expire on July 1, 2027. If the pilot period is not extended, this subparagraph will automatically sunset on July 1, 2027. Members will not be able to participate in the FINRA Remote Inspections Pilot Program after such date.

(8) Residential Supervisory Location. A location that is the private residence of a person associated with a Member where supervisory activities are conducted, including those described in Rule 1306(j)(4) through (7) or Rule 1306(c)(2), which satisfies the conditions for designation as a Residential Supervisory Location set forth in FINRA Rule 3110.19 shall also be considered a non-branch location for those activities pursuant to the Exchange Rules.

(e) – (k) (No change.)
