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Page 1 of \* 73

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

File No. \* SR 2024 - \* 05

Amendment No. (req. for Amendments \*)

Filing by Municipal Securities Rulemaking Board

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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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 \*).

Proposed Rule Change to Amend MSRB Rule G-27, on Supervision, to Allow Eligible Dealers to Fulfill Their Internal Inspection Obligation of Certain Offices and Locations Remotely for a Pilot Period, Subject to the Conditions Prescribed under FINRA's Remote Inspections Pilot Program

**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 \* Bri Last Name \* Joiner

Title \* Senior Director, Market Regulation

E-mail \* bjoiner@msrb.org

Telephone \* (202) 838-1500 Fax

**Signature**

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

Date 05/30/2024 (Title \*)

By Ronald W. Smith Corporate Secretary  
(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.

rsmith@msrb.org  
rg

Digitally signed by  
rsmith@msrb.org  
Date: 2024.05.30 17:04:18  
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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 \***

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MSRB-2024-05 19b-4.docx

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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MSRB-2024-05 Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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MSRB-2024-05 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**

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

## 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board (“MSRB”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change consisting of an amendment to MSRB Rule G-27, on supervision, to adopt new Supplementary Material .05, on remote inspections pilot program, to allow certain brokers, dealers, and municipal securities dealers (“dealers”) that are members of a registered securities association (“FINRA-member dealers”)<sup>3</sup> to fulfill their internal inspection (“office inspection”) obligation with respect to certain offices and locations, as described herein, remotely for a specified period, subject to the conditions of FINRA’s Remote Inspections Pilot Program (the “FINRA Pilot Program”) as established by FINRA Rule 3110.18 (the “proposed rule change”). Dealers that are not members of a registered securities association (i.e., FINRA), including bank dealers,<sup>4</sup> would be ineligible from conducting office inspections remotely.

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)<sup>5</sup> of the Exchange Act and Rule 19b-4(f)(6)<sup>6</sup> thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of July 1, 2024, for the proposed rule change to conform with the effective date of the FINRA Pilot Program.

(a) The text of the proposed rule change is included as Exhibit 5. Text proposed to be added is underlined.

(b) Not applicable.

(c) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The MSRB notes that the Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association and will generally, as such, refer to FINRA specifically in the filing when intending to clarify specific regulatory obligations and/or applicable rule(s).

<sup>4</sup> A bank dealer is defined under MSRB Rule D-8 as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank. The MSRB will consider at a later date whether or not to extend the ability to conduct office inspections remotely to bank dealers after giving due consideration to how to operationalize such an initiative.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

## 2. Procedures of the Self-Regulatory Organization

The board of directors of the MSRB approved the proposed rule change at its January 24-25, 2024 meeting. Questions concerning this filing may be directed to Bri Joiner, Senior Director, Market Regulation, Frank Mazzarelli, Director, Market Regulation, or Justin Kramer, Assistant Director, Market Regulation at 202-838-1500.

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

### (a) Purpose

The proposed rule change is meant to more closely conform the MSRB's dealer supervisory rule to FINRA's recently approved supervisory requirements to help ensure a coordinated regulatory approach in the area of dealer supervision and to enable FINRA and the Commission to more efficiently inspect those dealers that are subject to both self-regulatory organizations, as well as to promote regulatory consistency for dealers engaging in activities across asset classes. To that end, the MSRB is proposing to adopt new Supplementary Material .05, on remote inspections pilot program, to allow FINRA-member dealers that engage in municipal securities activities to fulfill their office inspection obligation remotely for a period of three years starting on July 1, 2024 through June 30, 2027 (the "Pilot Period"), if certain conditions are met as prescribed under the proposed rule change in conjunction with the FINRA Pilot Program under FINRA Rule 3110.18. The specific compliance obligations are addressed below.

### ***Background***

MSRB Rule G-27(b), on supervisory system, requires dealers to establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules. As part of an overall supervisory system, dealers must conduct inspections of each of their offices or locations: offices of municipal supervisory jurisdiction ("OMSJs"),<sup>7</sup> supervisory and non-

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<sup>7</sup> Pursuant to MSRB Rule G-27(g)(i), a municipal branch office is classified as an OMSJ if any one of the following enumerated activities occurs at the location with respect to municipal securities: (i) order execution and/or market making; (ii) structuring of public offerings or private placements; (iii) maintaining custody of customers' funds and/or municipal securities; (iv) final acceptance (approval) of new accounts on behalf of the member; (v) review and endorsement of customer orders, pursuant to subparagraph (c)(i)(G)(2); (vi) final approval of advertising for use by persons associated with the dealer, pursuant to MSRB Rule G-21(f); or (vii) responsibility for supervising the municipal securities activities of persons associated with the dealer at one or more other municipal branch offices of the dealer. An office that is designated as an OMSJ must

supervisory municipal branch office,<sup>8</sup> and non-branch location<sup>9</sup> in accordance with MSRB Rule G-27(d). Currently, MSRB Rule G-27(d)(i)(A) requires dealers to inspect every OMSJ and any supervisory municipal branch office at least annually. MSRB Rules G-27(d)(i)(B) and G-27(d)(i)(C) require dealers to inspect every non-supervisory municipal branch office at least every three years, and every non-branch location on a regular periodic<sup>10</sup> schedule. FINRA and

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have a registered principal on-site, pursuant to MSRB Rule G-27(b)(iv), and be inspected on an annual basis, pursuant to MSRB Rule G-27(d)(i)(A).

<sup>8</sup> Pursuant to MSRB Rule G-27(g)(ii)(A), a municipal branch office is any location where one or more associated persons of a dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any municipal security, or is held out as such, with the exclusion of such offices or locations identified in MSRB Rule G-27(g)(ii)(A)(1)-(7). Pursuant to MSRB Rule G-27(g)(ii)(B), notwithstanding the exclusions in MSRB Rule G-27(g)(ii)(A), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a municipal branch office (a/k/a supervisory municipal branch office). A non-supervisory municipal branch office would generally be deemed an office that is not charged with supervising the municipal securities activities of persons associated with the dealer.

<sup>9</sup> Pursuant to MSRB Rule G-27(g)(ii)(A), the following locations are excluded from registration as a municipal branch office, and are instead deemed non-branch locations: (i) a location established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (ii) an associated person's primary residence provided it is not held out to the public as an office and certain other conditions are satisfied; (iii) a location, other than a primary residence, that is used for municipal securities activities for less than 30 business days in any one calendar year and is not held out to the public as an office, and which satisfies certain of the conditions set forth in the primary residence exception; (iv) a location of convenience, where associated persons occasionally and exclusively by appointment meet with customers and is not held out to the public as an office; (v) a location used primarily for non-securities activities and from which the associated person(s) effects no more than 25 municipal securities transactions in any one calendar year; (vi) the floor of a registered national securities exchange; and (vii) a temporary location established in response to the implementation of a business continuity plan. Non-branch locations will include residential supervisory locations as of June 1, 2024. See Exchange Act Release No. 100131 (May 14, 2024), 89 FR 43961 (May 20, 2024) (File No. SR-MSRB-2024-04).

<sup>10</sup> While MSRB rules do not explicitly establish a specific timeframe for such regular periodic inspections, FINRA Rule 3110.13 sets out a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., "red flags"), as defined in proposed Supplementary Material .05(b)(1) of MSRB Rule G-27, and if a FINRA-member dealer establishes a longer periodic inspection schedule, such dealer must document in its

the Commission's Office of Compliance Inspections and Examinations (now the Division of Examinations) staff have previously issued joint guidance stating that office inspections must be conducted on-site at the office;<sup>11</sup> however, the MSRB understands that the recent pandemic propelled increased use and reliance on technology solutions by dealers to surveil associated person's activities in a remote work environment.

To help mitigate operational challenges and business disruption for dealers during the coronavirus disease (COVID-19) pandemic, including challenges related to having a vast number of individuals working from home and variations of telework arrangements, the MSRB has provided ongoing regulatory relief by allowing dealers to conduct their office inspections remotely, without an on-site visit to offices or locations, subject to certain conditions. The MSRB previously filed proposed rule changes for immediate effectiveness with the Commission in April 2020,<sup>12</sup> December 2020,<sup>13</sup> October 2021,<sup>14</sup> March 2022,<sup>15</sup> and November 2022<sup>16</sup> with,

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written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

<sup>11</sup> See FINRA Regulatory Notice 11-54, FINRA and the SEC Issue Joint Guidance on Effective Policies and Procedures for Broker-Dealer Branch Inspections, (November 30, 2011), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>. The MSRB amended MSRB Rule G-27 in 2006 to align with a series of rule changes by FINRA (f/k/a the National Association of Securities Dealers) and the New York Stock Exchange, which were meant to strengthen the supervisory control procedures of their member firms, including more stringent office inspection rules. The MSRB has favored regulatory consistency in order to avoid confusion between MSRB Rule G-27 and FINRA Rule 3110 and, consistent with this approach, the MSRB recognizes FINRA Regulatory Notice 11-54 and the core principle of on-site inspections with respect to dealer supervision. See Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400, 76403 (December 20, 2006) (File No. SR-MSRB-2006-10).

<sup>12</sup> See Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR-MSRB-2020-01).

<sup>13</sup> See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09).

<sup>14</sup> See Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR-MSRB-2021-06).

<sup>15</sup> See Exchange Act Release No. 94383 (March 9, 2022), 87 FR 14596 (March 15, 2022) (File No. SR-MSRB-2022-01).

<sup>16</sup> See Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR-MSRB-2022-08).

by and large, the collective relief allowing dealers to conduct office inspections for those respective calendar years remotely without an onsite visit to such offices or locations.<sup>17</sup> The most recent relief, provided in May 2023, allowed dealers to conduct office inspections due to be completed during the calendar year 2023 remotely through December 31, 2023, and office inspections due to be completed during the calendar year 2024 remotely through June 30, 2024.<sup>18</sup>

Similarly, in June 2020, FINRA<sup>19</sup> made its first of successive filings with the Commission, noting that ongoing extenuating circumstances warranted sensible and tailored accommodations for its member firms to meet their inspection obligations under FINRA Rule 3110(c).<sup>20</sup> FINRA went on to note that its proposed rule filing would create further efficiencies for its member firms by aligning with the MSRB's temporary extension of time for meeting the inspection requirements of offices set forth under MSRB Rule G-27.<sup>21</sup> In 2022, recognizing how operations and business models within the financial services industry have evolved during the public health crisis, including that a large number of firms have implemented a hybrid work environment in which particular business functions continue to be de-centralized, FINRA began a rulemaking process<sup>22</sup> that ultimately resulted, on November 17, 2023, in the Commission approving a proposed rule change to adopt the FINRA Pilot Program under Supplementary Material .18 of FINRA Rule 3110.<sup>23</sup> The FINRA Pilot Program consists of a voluntary, three-year remote inspections pilot program to allow eligible FINRA-member dealers to elect to fulfill their office inspection obligations under FINRA Rule 3110 by conducting inspections of eligible offices of supervisory jurisdictions, branch offices, and non-branch locations remotely without

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<sup>17</sup> See Supplementary Material .01(a) of MSRB Rule G-27.

<sup>18</sup> See Exchange Act Release No. 97423 (May 2, 2023), 88 FR 29774 (May 8, 2023) (File No. SR-MSRB-2023-04).

<sup>19</sup> FINRA previously issued a request for comment in 2017 on a proposal to allow firms to conduct remote office inspections. See FINRA Regulatory Notice 17-38, Remote Branch Office Inspections, (November 13, 2017), available at [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-17-38.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-38.pdf).

<sup>20</sup> See Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (File No. SR-FINRA-2020-019).

<sup>21</sup> *Id.* at 40714.

<sup>22</sup> See Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144, 50147 (August 15, 2022) (File No. SR-FINRA-2022-021). FINRA later withdrew this proposal, available at <https://www.finra.org/sites/default/files/2023-04/sr-finra-2022-021-withdrawal.pdf>.

<sup>23</sup> See Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (File No. SR-FINRA-2023-007). Pursuant to FINRA Rule 3110.18(m), on the sunset of Rule 3110.17, if FINRA Rule 3110.17 has not already expired by its own terms, FINRA Rule 3110.17 will automatically sunset on June 30, 2024.

an on-site visit to such locations subject to certain conditions and criteria.<sup>24</sup> The proposed rule change is designed to promote regulatory consistency for dealers that are both FINRA-member dealers and MSRB registrants.

### ***Description of Proposed Rule Change***

Proposed Supplementary Material .05 of MSRB Rule G-27 would provide eligible FINRA-member dealers<sup>25</sup> with the flexibility to opt into the FINRA Pilot Program, consisting of a voluntary, three-year remote inspections pilot program to fulfill their office inspection obligations under MSRB Rule G-27(d) by conducting inspections of eligible OMSJs, municipal branch offices, and non-branch locations remotely without an on-site visit to such locations, subject to certain conditions and criteria. The requirements in connection with the participation by FINRA-member dealers in the FINRA Pilot Program under proposed Supplementary Material .05 would mirror in all material respects the requirements with respect to FINRA-member dealers' participation under FINRA rules in the FINRA Pilot Program. FINRA-member dealers that engage in municipal securities activities and that are therefore subject to MSRB Rule G-27 would be able to opt into the FINRA Pilot Program with respect thereto. FINRA-member dealers opting into the FINRA Pilot Program would do so pursuant to the provisions of proposed Supplementary Material .05 of MSRB Rule G-27 and through the mechanisms and processes established by FINRA in connection with the FINRA Pilot Program.

The proposed rule change also re-orders and streamlines some of the provisions of FINRA Rule 3110.18.

#### **I. Scope (Proposed Supplementary Material .05(a) of MSRB Rule G-27)**

Proposed Supplementary Material .05(a), on scope, of MSRB Rule G-27 would outline the scope of the proposed rule change establishing the standards by which a FINRA-member dealer may participate in the FINRA Pilot Program and mirrors the scope of the FINRA Pilot Program under FINRA Rule 3110.18(a). Proposed Supplementary Material .05(a) would permit FINRA-member dealers to avail themselves of the FINRA Pilot Program for the required inspections of OMSJs, municipal branch offices, and non-branch locations, in accordance with MSRB Rule G-27(d). As such, under proposed Supplementary Material .05(a), FINRA-member dealers would be able to participate in the FINRA Pilot Program for a period of three years, starting on July 1, 2024, and automatically sunseting on June 30, 2027, if the proposed Supplementary Material .05 is not amended to allow continued participation by FINRA-member dealers in the FINRA Pilot Program.<sup>26</sup> FINRA-member dealers would not be able to participate

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<sup>24</sup> Id.

<sup>25</sup> As previously noted, proposed Supplementary Material .05 of MSRB Rule G-27 would be applicable only to dealers that are FINRA members.

<sup>26</sup> The MSRB will engage with FINRA to understand the efficacy of remote office inspections based on FINRA's review of data and information provided to FINRA by FINRA-member dealers as required under the FINRA Pilot Program.



in the FINRA Pilot Program after the prescribed provisions under this proposed Supplementary Material sunset. The purpose of the proposed rule change would be to allow FINRA-member dealers to participate in the FINRA Pilot Program while also meeting their compliance obligations under MSRB Rule G-27 in the same manner in which they are able to participate in the FINRA Pilot Program with respect to their parallel obligations under FINRA Rule 3110.18.

## II. Risk Assessment (Proposed Supplementary Material .05(b) of MSRB Rule G-27)

Proposed Supplementary Material .05(b), on risk assessment, of MSRB Rule G-27 would outline the need for FINRA-member dealers to undertake a risk assessment in order to participate in the FINRA Pilot Program and mirrors the risk assessment provisions required with respect to the FINRA Pilot Program under FINRA Rule 3110.18(b). Specifically, proposed Supplementary Material .05(b)(1) would provide that a FINRA-member dealer could elect to conduct the applicable inspection remotely, without an on-site visit for an office or location, when such dealer reasonably determines that the purposes of this Supplementary Material can be accomplished by conducting such required inspection remotely. The FINRA-member dealer would be required to develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for an office<sup>27</sup> or location prior to conducting a remote inspection. The risk assessment must document the factors considered, including, among other things, the FINRA-member dealer's size, organizational structure, scope of business activities, number and location of the FINRA-member dealer's offices, the nature and complexity of the products and services offered by the FINRA-member dealer, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of municipal securities representatives or associated persons, and any red flags, and must take into account any higher-risk activities that take place at, or higher-risk associated persons that are assigned to, that office or location.<sup>28</sup> Additionally, proposed Supplementary Material .05(b)(1) would require

<sup>27</sup> While MSRB rules do not define "office," in FINRA's 2005 rulemaking initiative to establish a uniform definition of branch office, FINRA noted that the language of the uniform definition substantially mirrored the Commission's definition of "office" in its books and records rules under the Exchange Act. Exchange Act Rule 17a-3(g)(i), defines the term as any location where one or more associated persons regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security (17 CFR 240.17a-3). See NASD Notice to Members 05-67 (October 6, 2005), available at <https://www.finra.org/sites/default/files/NoticeDocument/p015121.pdf>.

<sup>28</sup> With one exception, these provisions of proposed Supplementary Material .05(b)(1) mirror FINRA Rule 3110.18(b)(1) with non-substantive terminology changes. However, FINRA Rule 3110.18(b)(1) refers to, without including within its text, a list of factors set forth in FINRA Rule 3110.12 as factors to be considered and documented with respect to the risk assessment required under FINRA Rule 3110.18(b)(1). Because MSRB Rule G-27 does not currently include a provision similar to FINRA Rule 3110.12, and therefore cannot include such factors by reference in the same manner as in FINRA Rule 3110.18(b)(1), proposed Supplementary Material .05(b)(1) of MSRB Rule G-27 lists such factors within the text thereof. Additionally, proposed Supplementary Material

a dealer to conduct an on-site inspection on the required cycle for such offices or locations that are not eligible for remote office inspections due to having not met the firm or location level requirements under proposed Supplementary Material .05(c) of MSRB Rule G-27. Notwithstanding proposed Supplementary Material .05, a dealer shall remain subject to the other requirements of MSRB Rule G-27(d), on internal inspections.

Proposed Supplementary Material .05(b)(2), on other risk assessment factors, of MSRB Rule G-27 would provide that, in addition to the factors that FINRA-member dealers must consider as part of their risk assessment for remotely inspecting an office or location under Supplementary Material .05(b)(1), on review standards, FINRA-member dealers must consider, among other things, the following factors also contained in FINRA Rule 3110.18(b)(2), on other factors to consider for risk assessment:

- (i) the volume and nature of customer complaints;<sup>29</sup>
- (ii) the volume and nature of outside business activities, particularly investment-related;<sup>30</sup>
- (iii) the volume and complexity of products offered;<sup>31</sup>
- (iv) the nature of the customer base, including vulnerable adult investors;<sup>32</sup>
- (v) whether associated persons are subject to heightened supervision;<sup>33</sup>
- (vi) failures by associated persons to comply with the FINRA-member dealer's written supervisory procedures;<sup>34</sup> and
- (vii) any recordkeeping violations.<sup>35</sup>

Proposed Supplementary Material .05(b)(2) would prescribe that FINRA-member dealers should conduct on-site inspections or make more frequent use of unannounced, on-site

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.05(b)(1) of MSRB Rule G-27 states that dealers must conduct an on-site inspection of that office or location on the applicable schedule under section (d) of MSRB Rule G-27.

<sup>29</sup> Proposed Supplementary Material .05(b)(2)(A), mirroring FINRA Rule 3110.18(b)(2)(A).

<sup>30</sup> Proposed Supplementary Material .05(b)(2)(B), mirroring FINRA Rule 3110.18(b)(2)(B).

<sup>31</sup> Proposed Supplementary Material .05(b)(2)(C), mirroring FINRA Rule 3110.18(b)(2)(C).

<sup>32</sup> Proposed Supplementary Material .05(b)(2)(D), mirroring FINRA Rule 3110.18(b)(2)(D).

<sup>33</sup> Proposed Supplementary Material .05(b)(2)(E), mirroring FINRA Rule 3110.18(b)(2)(E).

<sup>34</sup> Proposed Supplementary Material .05(b)(2)(F), mirroring FINRA Rule 3110.18(b)(2)(F) with a non-substantive terminology change.

<sup>35</sup> Proposed Supplementary Material .05(b)(2)(G), mirroring FINRA Rule 3110.18(b)(2)(G).

inspections for high-risk offices or locations or when there are red flags, and supervisory systems must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.<sup>36</sup>

The existing on-site office inspection obligation<sup>37</sup> under MSRB Rule G-27(d) has been an industry benchmark, imposing high standards regarding supervisory obligations. Therefore, in moving away from the existing standard, the MSRB believes the provisions of the proposed rule change should include a risk assessment conducted by FINRA-member dealers under proposed Supplementary Material .05(b)(1), on review standards, to mitigate residual risk not addressed by the ineligibility criteria and the conditions contained in the FINRA Pilot Program. In addition, proposed Supplementary Material .05(b)(2), on other risk assessment factors, would provide additional guardrails to manage the risk associated with firms conducting remote office inspections under the FINRA Pilot Program.

### **III. Eligibility, Exclusions and Conditions - Firm Level Requirements (Proposed Supplementary Material .05(c)(1) of MSRB Rule G-27)**

FINRA Rule 3110.18(f)(1) outlines certain conditions that would render a member firm ineligible to conduct remote inspections of any of its offices or locations under the FINRA Pilot Program, if at any time during the Pilot Period, the member firm: (i) is or becomes designated as a restricted firm under FINRA Rule 4111; (ii) is or becomes designated as a taping firm under FINRA Rule 3170; (iii) receives a notice from FINRA, pursuant to FINRA Rule 9557, regarding capital compliance related matters under Rules 4110, 4120 or 4130; (iv) is or becomes suspended from FINRA membership; (v) has been a FINRA member for less than 12 months; or (vi) is or has been found by the Commission or FINRA to be in violation of office inspection obligations under FINRA Rule 3110(c) within the past three years.<sup>38</sup>

The MSRB believes that the aforementioned categories of ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for FINRA-member dealers that pose higher risks and, therefore, should result in ineligibility for the FINRA Pilot Program. As such, proposed Supplementary Material

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<sup>36</sup> These provisions of proposed Supplementary Material .05(b)(2) mirror FINRA Rule 3110.18(b)(2), with elimination of certain cross-references to FINRA rules.

<sup>37</sup> See supra note 11.

<sup>38</sup> Notwithstanding the conditions outlined pursuant to FINRA 3110.18(f)(1), FINRA Rule 3110.18(k), on determination of ineligibility, states that FINRA may make a determination in the public interest and for the protection of investors that a member firm is no longer eligible to participate in the FINRA Pilot Program if such member firm fails to comply with the requirements of FINRA Rule 3110.18. In such instances, FINRA will provide written notice to the member firm of such determination that the member firm would no longer be eligible to participate in the FINRA Pilot Program and must conduct on-site inspections of required offices and locations in accordance with FINRA Rule 3110(c).

.05(c)(1)(A) of MSRB Rule G-27 would provide that a FINRA-member dealer is ineligible to conduct remote inspections of any of its offices or locations if the dealer is not a FINRA-member dealer or if at any time during the Pilot Period such dealer becomes ineligible under FINRA's prescribed ineligibility criteria to conduct remote inspections under the FINRA Pilot Program, pursuant to FINRA Rule 3110.18(f)(1). In addition, the MSRB believes the proposed ineligibility criteria would appropriately limit the potential population of FINRA Pilot Program participants to those FINRA-member dealers that may be better positioned to conduct remote inspections.

Additionally, under proposed Supplementary Material .05(c)(1)(B)(i) of MSRB Rule G-27, in support of a risk-based approach to using remote office inspections as a firm-level condition, the FINRA-member dealer would be required to have a recordkeeping system to make, maintain and preserve required records under applicable securities laws and regulations, including applicable MSRB rules, and the FINRA-member dealer's written supervisory procedures under MSRB Rule G-27(c). These records must not be maintained or preserved physically or electronically at the office or location subject to remote inspection, and the FINRA-member dealer must have prompt access to such records.<sup>39</sup> The MSRB notes that advancements in technology have changed the way in which FINRA-member dealers and their associated persons conduct business and communicate with clients, with such activities of associated persons occurring, by and large, through centralized electronic systems and maintained or preserved electronically by the FINRA-member dealer rather than in paper form at offices or locations.<sup>40</sup> The MSRB understands that records may be created at an office or location subject to remote inspections, but not maintained at such office or location. Finally, as a further firm-level condition, FINRA-member dealers would be required under proposed Supplementary Material .05(c)(1)(B)(ii) of MSRB Rule G-27 to determine that their surveillance and technology tools are appropriate to supervise the types of risks presented by each remotely supervised office or location and sets out examples of types of potential surveillance and technology tools that FINRA-member dealers might consider using. These provisions mirror the provisions of FINRA Rule 3110.18(f)(2), with appropriate cross-reference changes to the applicable MSRB rule provision.

#### **IV. Eligibility, Exclusions and Conditions - Location Level Requirements (Proposed Supplementary Material .05(c)(2) of MSRB Rule G-27)**

FINRA Rule 3110.18(g) lists the criteria under the FINRA Pilot Program that would render a particular office or location ineligible for remote office inspection. Under FINRA Rule 3110.18(g)(1), offices or locations would be ineligible for a remote office inspection if at any time during the FINRA Pilot Period:

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<sup>39</sup> Under Regulation S-P, on privacy of consumer financial information, dealers are required to have policies and procedures addressing the protection of customer information and records. See 17 C.F.R. 248.30.

<sup>40</sup> See Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620, 28622 and 28623 (May 4, 2023) (File No. SR-FINRA-2023-007) (Notice of Filing).

- (i) one or more associated persons at such office or location is or becomes subject to a mandatory heightened supervisory plan under the rules of FINRA, the Commission, or a state regulatory agency;
- (ii) one or more associated persons at such office or location is or becomes 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 firm and is not subject to a mandatory heightened supervision plan as a condition to approval or permission for such association;<sup>41</sup>
- (iii) the firm is or becomes subject to FINRA Rule 1017(a)(7) as a result of one or more associated persons at such office or location;
- (iv) one or more associated persons at such office or location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer) or similar form by a registered securities association;<sup>42</sup>
- (v) one or more associated persons at such office or location is or becomes subject to a disciplinary action taken by the firm that is or was reportable under FINRA Rule 4530(a)(2);
- (vi) one or more associated persons at such office or location is engaged in proprietary trading, including the incidental crossing of customer orders, or the direct supervision of such activities; or
- (vii) the office or location handles customer funds or securities.

The MSRB believes that the aforementioned categories of location-level ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for activities within offices or locations that pose higher risks and, therefore, such offices or locations should be ineligible for the FINRA Pilot Program. As such, proposed Supplementary Material .05(c)(2)(A), on office or location requirements, of MSRB Rule G-27 would provide that a FINRA-member dealer is ineligible to conduct remote inspection of an office or location if at any time during the Pilot Period such office or location becomes ineligible for remote inspection under the prescribed FINRA requirements relating to location-level ineligibility for participation in the FINRA Pilot Program under FINRA Rule 3110.18(g)(1).

In addition, as part of the requirement to develop a reasonably designed risk-based approach to using remote inspections, and the requirement to conduct and document a risk assessment, proposed Supplementary Material .05(c)(2)(B), on office or location requirements, of MSRB Rule G-27 would require that a specific office or location of the FINRA-member dealer satisfy the following conditions to be eligible for remote inspections under the FINRA Pilot Program:

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<sup>41</sup> The language mirrors the text of FINRA Rule 3110.18(g)(1)(B) with the exception of the cross-reference to paragraph (g)(1)(A) of FINRA Rule 3110.18.

<sup>42</sup> The language substantively mirrors the text of FINRA Rule 3110.18(g)(1)(D). The textual changes include the title of Form U-4 and the addition of the phrase “or similar form by a registered securities association.”

- (i) electronic communications (e.g., e-mail) are made through the FINRA-member dealer's electronic system;<sup>43</sup>
- (ii) the associated person's correspondence and communications with the public are subject to the FINRA-member dealer's supervision in accordance with MSRB Rule G-27(e);<sup>44</sup> and
- (iii) no books or records of the FINRA-member dealer required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable MSRB rules, and such FINRA-member dealer's own written supervisory procedures under MSRB Rule G-27(c) are physically or electronically maintained and preserved at such office or location.<sup>45</sup>

A FINRA-member dealer's office inspection program is a necessary part of its supervisory system and supports a culture of compliance because it provides an additional level of oversight and safeguards against risk; therefore, the conditions and eligibility exclusions at the firm and location level are appropriate to ensure the efficacy of remote inspections undertaken pursuant to the FINRA Pilot Program as they will provide safeguards that will help ensure that firms maintain effective supervision when conducting remote inspections. In addition, the MSRB believes that keeping the firm and location-level eligibility criteria consistent with FINRA-amended rules would avoid regulatory inconsistencies in the application and use of remote office inspections by FINRA-member dealers participating in the FINRA Pilot Program by subjecting such dealers to the same supervisory framework.

#### **V. Written Supervisory Procedures for Remote Inspections (Proposed Supplementary Material .05(d) of MSRB Rule G-27)**

Consistent with their obligations under FINRA Rule 3110(b), on written procedures, FINRA Rule 3110.18(c), on written supervisory procedures for remote inspections, requires member firms that elect to participate in the FINRA Pilot Program to establish, maintain, and enforce written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Under proposed Supplementary Material .05(d), on written supervisory procedures for remote inspections, of MSRB Rule G-27, FINRA-member dealers electing to participate in the FINRA Pilot Program would be required, consistent with their obligations under MSRB Rule G-27(c), to establish, maintain, and enforce written

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<sup>43</sup> Proposed Supplementary Material .05(c)(2)(B)(i), mirroring FINRA Rule 3110.18(g)(2)(A) with a non-substantive terminology change.

<sup>44</sup> Proposed Supplementary Material .05(c)(2)(B)(ii), mirroring FINRA Rule 3110.18(g)(2)(B) with appropriate cross-reference change to the applicable MSRB rule provision and a non-substantive terminology change.

<sup>45</sup> Proposed Supplementary Material .05(c)(2)(B)(iii), mirroring FINRA Rule 3110.18(g)(2)(C) with appropriate cross-reference changes to applicable MSRB rule provisions and a non-substantive terminology change.

supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, including applicable MSRB rules. These reasonably designed procedures, at a minimum, must address:

- (i) the methodology, including technology, that may be used to conduct remote inspections;<sup>46</sup>
- (ii) the factors considered in the risk assessment made for each applicable office or location pursuant to proposed Supplementary Material .05(b);<sup>47</sup> and
- (iii) the use of other risk-based systems employed generally by the FINRA-member dealer to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, including applicable MSRB rules.<sup>48</sup>

#### **VI. Effective Supervisory System (Proposed Supplementary Material .05(e) of MSRB Rule G-27)**

FINRA Rule 3110.18(d), on effective supervisory system, provides that a FINRA-member dealer's use of remote inspection of an office or location will be held to the same standards for reasonable review as set forth under FINRA Rule 3110.12. FINRA Rule 3110.18(d) also provides where a firm's remote inspection of an office or location identifies any red flags, the firm 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.

Proposed Supplementary Material .05(e), on effective supervisory system, of MSRB Rule G-27 would mirror FINRA Rule 3110.18(d) by reiterating that the requirement to conduct inspections of offices and locations is one part of the FINRA-member dealer's overall obligation to have an effective supervisory system. Therefore, a FINRA-member dealer must maintain its ongoing review of the activities and functions at all offices and locations regardless of whether such FINRA-member dealer conducts inspections remotely, and that a FINRA-member dealer's use of remote inspection of an office or location would be subject to the same standards for review as for other offices or locations under MSRB Rule G-27 in addition to the standard set forth under this Supplementary Material.<sup>49</sup> Additionally, proposed Supplementary Material

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<sup>46</sup> Proposed Supplementary Material .05(d)(1), mirroring FINRA Rule 3110.18(c)(1).

<sup>47</sup> Proposed Supplementary Material .05(d)(2), mirroring FINRA Rule 3110.18(c)(2).

<sup>48</sup> Proposed Supplementary Material .05(d)(3), mirroring FINRA Rule 3110.18(c)(4) with a non-substantive terminology change. FINRA Rule 3110.18(c)(3) is addressed in proposed Supplementary Material .05(g) discussed below.

<sup>49</sup> FINRA Rule 3110.18(d), on effective supervisory system, refers to the standards for office or location reviews under FINRA Rule 3110.12, on reasonable standards of review, and states that remote office inspections are subject to the same standards as

.05(e) would state that, where a FINRA-member dealer detects red flags through a remote inspection, the FINRA-member dealer may need to impose additional supervisory procedures or provide more frequent monitoring for that office or location, which could include a subsequent on-site visit on an announced or unannounced basis. The MSRB believes that the supervisory system requirements in the proposed rule change, consistent with the FINRA Pilot Program, would assist in managing potential risks associated with dealers conducting remote office inspections.

## **VII. Documentation Requirement (Proposed Supplementary Material .05(f) of MSRB Rule G-27)**

FINRA Rule 3110.18(e) contains documentation requirements for member firms participating in the FINRA Pilot Program. In particular, FINRA Rule 3110.18(e) requires member firms to maintain and preserve a centralized record for each Pilot Year, as defined under FINRA Rule 3110.18(l) (a “Pilot Year”),<sup>50</sup> that separately identifies all offices or locations that were inspected remotely and any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring as a result of the remote office inspection. In addition, FINRA Rule 3110.18(e) requires the documentation of the results of a remote inspection for an office or location to 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.

Consistent with the FINRA provision, proposed Supplementary Material .05(f), on documentation requirement, of MSRB Rule G-27 would mirror such documentation requirements for FINRA-member dealers opting to avail themselves of the FINRA Pilot Program. Specifically, proposed Supplementary Material .05(f) would require such dealers to maintain and preserve a centralized record for each of the Pilot Years, within the meaning of the FINRA Pilot Program. In addition, proposed Supplementary Material .05(f) would require FINRA-member dealers to identify all offices or locations that were inspected remotely and any offices or locations for which such dealer determined to impose additional supervisory procedures or more frequent monitoring, as provided in proposed Supplementary Material .05(e),

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other inspections. Supplementary Material .05(e) of MSRB Rule G-27 explicitly incorporates within the text that the same standards for review apply for on-site and remote inspections.

<sup>50</sup> The textual changes include the reference to FINRA Rule 3110.18(l). FINRA Rule 3110.18(l) defines Pilot Year as the following: (1) Pilot Year 1 is the period beginning on July 1, 2024 and ending on December 31 of the same year; (2) Pilot Year 2 means the calendar year period following Pilot Year 1, beginning on January 1 and ending on December 31; (3) Pilot Year 3 means the calendar year period following Pilot Year 2, beginning on January 1 and ending on December 31; and (4) if applicable, where Pilot Year 1 covers a period that is less than a full calendar year, then Pilot Year 4 means the period following Pilot Year 3, beginning on January 1 and ending on June 30, 2027.



on effective supervisory system, of MSRB Rule G-27. Moreover, a FINRA-member dealer's documentation of the results of a remote inspection of an office or location would need to identify any additional supervisory procedures or more frequent monitoring of such 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. The MSRB believes that these requirements would assist in tracking and documenting the efficacy of the FINRA-member dealer's remote inspections.

### **VIII. Data and Information Collection Requirement (Proposed Supplementary Material .05(g) of MSRB Rule G-27)**

FINRA Rule 3110.18(h) outlines requirements for member firms that elect to participate in the FINRA Pilot Program to collect specific data and information as part of the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(h) requires firms to collect specific data points and to provide such data and information to FINRA on a quarterly basis, in the manner and format determined by FINRA,<sup>51</sup> including: (i) the number of offices and locations with an inspection completed during each calendar quarter;<sup>52</sup> (ii) the number of those offices or locations in each calendar quarter that were inspected remotely;<sup>53</sup> (iii) the number of those offices or locations in each calendar quarter that were the subject of an on-site inspection, as well as the number of such inspections that were on-site because of a finding;<sup>54</sup> (iv) the number of offices and locations for which a remote office inspection was conducted in the calendar quarter that identified a finding, the number of findings, a list of the significant findings;<sup>55</sup> and (v) the number of locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the significant findings.<sup>56</sup> Moreover, dealers are required to provide FINRA with their written supervisory procedures for remote inspections that account for escalating significant findings; new hires; supervising brokers with a significant history of misconduct; and outside business activities and "doing business as" (or DBA) designations.<sup>57</sup> In

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<sup>51</sup> FINRA Rule 3110.18(h)(1) notes that FINRA-member dealers must provide separate counts for offices of supervisory jurisdiction ("OSJs"), supervisory branch offices, non-supervisory branch offices, and non-branch locations. FINRA office categories correspond to the MSRB office categories contained in MSRB Rule G-27.

<sup>52</sup> See FINRA Rule 3110.18(h)(1)(A).

<sup>53</sup> See FINRA Rule 3110.18(h)(1)(B).

<sup>54</sup> See FINRA Rule 3110.18(h)(1)(C) and (D). Pursuant to FINRA Rule 3110.18(h)(1), a finding means a discovery made during an inspection that led to a remedial action or was listed on the member's inspection report.

<sup>55</sup> See FINRA Rule 3110.18(h)(1)(E).

<sup>56</sup> See FINRA Rule 3110.18(h)(1)(F).

<sup>57</sup> See FINRA Rule 3110.18(h)(1)(G).

addition, FINRA Rule 3110.18(h)(2) outlines requirements for member firms electing to participate in the FINRA Pilot Program to provide certain data and information for Pilot Year 1 if it is less than a full calendar year<sup>58</sup> and FINRA Rule 3110.18(h)(3) lists additional data and information to be provided to FINRA for calendar year 2019 for member firms electing to participate in the FINRA Pilot Program.

The MSRB believes that requiring certain data and information to be collected and periodically provided to FINRA is critical to evaluating the effectiveness of remote office inspections during the Pilot Period, including to determine if the Pilot Program should be extended or made permanent.<sup>59</sup> Proposed Supplementary Material .05(g), on data and information collection requirement, of MSRB Rule G-27 would require FINRA-member dealers to comply with the requirements of FINRA with respect to the collection and submission of specified data and information, and in the manner and format required under the FINRA Pilot Program. Furthermore, proposed Supplementary Material .05(g) of MSRB Rule G-27, which substantially mirrors FINRA Rule 3110.18(h)(4) would require FINRA-member dealers that elect to participate in the FINRA Pilot Program to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with any specified data and information collection, and transmission requirements prescribed by FINRA.

#### **IX. Election to Participate in Remote Inspections Pilot Program (Proposed Supplementary Material .05(h) of MSRB Rule G-27)**

FINRA Rule 3110.18(i) specifies how a firm elects to participate in, or subsequently withdraws from, the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(i) states that a firm must, at least five calendar days before the beginning of a Pilot Year, provide FINRA an "opt-in notice" in the manner and format determined by FINRA.<sup>60</sup> Moreover, FINRA Rule 3110.18(i) specifies that a FINRA member that elects to withdraw from subsequent Pilot Years (i.e., Pilot Year 2, Pilot Year 3, and Pilot Year 4, if applicable) shall, at least five calendar days before the end of the then current Pilot Year, provide FINRA with an "opt-out notice" in the manner and format determined by FINRA.<sup>61</sup>

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<sup>58</sup> FINRA Rule 3110.18(h)(2) also contains language that addresses providing counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations if Pilot Year 1 covers a period less than a full calendar year.

<sup>59</sup> As previously mentioned, the MSRB will engage with FINRA to understand the efficacy of remote office inspections based on FINRA's review of data and information provided to FINRA by FINRA-member dealers as required under the FINRA Pilot Program. More specifically, the examination of the municipal securities activities of FINRA-member dealers would aid the MSRB's understanding of the efficacy of remote office inspections.

<sup>60</sup> FINRA Rule 3110.18(i) also contains provisions for firms wishing to opt-out of the FINRA Pilot Program.

<sup>61</sup> FINRA may, in exceptional cases and where good cause is shown, waive the applicable timeframes for the required opt-in or opt-out notices.

Proposed Supplementary Material .05(h), on election to participate, of MSRB Rule G-27 would require FINRA-member dealers electing to participate in the FINRA Pilot Program to make their election in the manner and format as prescribed, in accordance with FINRA Rule 3110.18(i). In addition, proposed Supplementary Material .05(h) would require FINRA-member dealers that elect to withdraw from the FINRA Pilot Program for subsequent years to provide such notice to FINRA in the manner and format as prescribed in accordance with FINRA Rule 3110.18(i). These requirements will ensure that FINRA-member dealers can properly elect to participate in, or subsequently withdraw from, the FINRA Pilot Program while satisfying requirements in accordance with MSRB Rule G-27(d) on office inspections.

**X. Failure to Satisfy Conditions (Proposed Supplementary Material .05(i) of MSRB Rule G-27)**

FINRA Rule 3110.18(j), on failure to satisfy conditions, addresses situations in which a member firm fails to satisfy the requirements for participating in the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(j) states that member firms that fail to satisfy the conditions set forth to avail themselves of the FINRA Pilot Program, including the requirement to timely collect and submit the data and information to FINRA as set forth under FINRA Rule 3110.18(h), shall be ineligible to participate in the FINRA Pilot Program. Such member firms would be required to conduct on-site inspections of each office and location on the required cycle in accordance with FINRA Rule 3110(c) on internal inspections.

Consistent with FINRA Rule 3110.18(j), proposed Supplementary Material .05(i), on failure to satisfy conditions, of MSRB Rule G-27 would specify that any FINRA-member dealer that fails to satisfy the conditions of proposed Supplementary Material .05 of MSRB Rule G-27 and of FINRA Rule 3110.18, including the specified requirement to timely collect and submit data, would no longer be eligible to participate in the FINRA Pilot Program. Such FINRA-member dealers would need to conduct on-site inspections of each office and location on the required cycle in accordance with MSRB Rule G-27(d), on internal inspections.

While FINRA has adopted FINRA Rule 3110.18(k), on determination of ineligibility, and FINRA Rule 3110.18(m), on the sunset of FINRA Rule 3110.17, the proposed rule change does not incorporate similar provisions since FINRA solely makes the determination regarding FINRA-member dealers' participation in the FINRA Pilot Program and the sunset of the FINRA relief under FINRA Rule 3110.17, and therefore those provisions would not be applicable. The MSRB specifically references and explains these provisions in describing adopted FINRA Rule 3110.18 within the filing. In addition, for purposes of the proposed rule change, the terms defined in FINRA Rule 3110.18(l) are used herein with the same meaning as set forth in FINRA Rule 3110.18(l).

(b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,<sup>62</sup> which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In accordance with Section 15B(b)(2)(C) of the Exchange Act,<sup>63</sup> the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the proposed rule change would allow FINRA-member dealers to participate in the FINRA Pilot Program in a manner intended to provide a practical and balanced way for such dealers to continue effectively meeting their core regulatory obligations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable MSRB rules, which directly serves investor protection. The MSRB has noticed that there has been a shift towards adopting work from home models due to carryover from the conditions associated with the COVID-19 pandemic, and the criteria and conditions contained within the proposed rule change are designed to accommodate this shift and allow firms to supplement their existing inspection programs with the option to conduct remote inspections at offices or locations where such remote inspections satisfy the proposed conditions in the proposed rule change, and are consistent with a reasonably designed supervisory system, while also minimizing associated risks, as much as possible, to investor protections. The risk assessment required by the proposed rule change will further mitigate residual risk not addressed by the ineligibility criteria and the affirmative conditions imposed to participate in the FINRA Pilot Program. As such, the proposed rule change is designed to minimize risks by limiting which offices or locations can be inspected remotely while also setting conditions for FINRA-member dealers wishing to partake in remote office inspections. The robust nature of the criteria that must be satisfied and circumstances that would make a location ineligible for remote office inspections serve an important role in reducing the potential for fraud and manipulative acts. For example, the terms of the proposed rule change would include important safeguards, such as requiring risk assessments, supplemental written supervisory procedures related to remote inspections, and documentation for FINRA-member dealers wishing to engage in remote office inspections, which furthers the prevention of manipulative acts and practices and protection of investors, municipal entities, obligated persons and the public interest. FINRA-member dealers are required to determine that their surveillance and technology tools are appropriate to supervise remote office inspections in furtherance of preventing fraudulent and manipulative acts and practices.

By permitting FINRA-member dealers to avail themselves of remote office inspections for the requisite period by use of the FINRA Pilot Program, such dealers are receiving the same

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<sup>62</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>63</sup> Id.

benefit, regardless of asset class, of being able to deploy their resources in a manner that maximizes efficiencies, which promotes just and equitable principles of trade, through regulatory consistency for FINRA -member dealers and MSRB registrants. The MSRB believes that the proposed rule change would facilitate transactions in municipal securities and remove impediments to a free and open market because, by ensuring a consistent regulatory framework for which FINRA-member dealers can avail themselves of remote office inspections, the proposed rule change would alleviate some of the operational challenges such dealers would otherwise experience, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products.

Finally, aligning the proposed rule change with adopted FINRA Rule 3110.18 and thereby making such requirements specifically applicable to FINRA-member dealers' municipal securities activities fosters cooperation between regulators, because it creates as close as possible a uniform standard, with minimal distinction needed between the treatment of municipal securities and other asset classes, enabling FINRA and the Commission to more efficiently inspect dealers subject to the rules of both self-regulatory organizations.

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

Section 15B(b)(2)(C) of the Exchange Act<sup>64</sup> requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change and believes that the proposed rule change would not impose any unnecessary or inappropriate burden on competition, as the proposed rule change would align with the adoption of FINRA Rule 3110.18 allowing remote office inspections by FINRA members, for a requisite period of time, by participating in the FINRA Pilot Program. In addition, the proposed rule change would be applied equally to all dealers that are FINRA-member dealers.<sup>65</sup> Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>66</sup>

In determining whether these standards have been met, the MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>67</sup> In accordance with

<sup>64</sup> Id.

<sup>65</sup> As previously mentioned, the MSRB will consider amendments to MSRB Rule G-27 at a later date on whether the proposed rule change should be extended to other dealers under MSRB rules, such as bank dealers.

<sup>66</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>67</sup> See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on

this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change. The proposed rule change would amend MSRB Rule G-27 to provide a mechanism for FINRA-member dealers to participate in the FINRA Pilot Program.<sup>68</sup> The proposed rule change is intended to align MSRB Rule G-27 with the adopted FINRA Rule 3110.18, which established the FINRA Pilot Program, providing an option for FINRA-member dealers to fulfill their office inspection obligations by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such offices or locations. The MSRB also believes the proposed rule change would be appropriate as some dealers' business model and work environment continue to evolve with ongoing technological advancements, and the shift to remote working may have accelerated since the COVID-19 pandemic.

## Benefits

The MSRB believes that the proposed rule change would benefit FINRA-member dealers by offering a remote office inspection option to such eligible dealers, subject to certain conditions, while minimizing the potential of harm to issuers and investors who benefit from the current supervisory framework. Specifically, the MSRB believes that FINRA-member dealers would have sufficient capability in carrying out their office inspection duties remotely while minimizing the impact on the quality of office inspections. The proposed rule change would therefore lower costs for FINRA-member dealers that choose the remote office inspection option by participating in the FINRA Pilot Program. The MSRB has identified approximately 11,000 municipal branch offices, which are inclusive of single-person municipal branch offices.<sup>69</sup> For all FINRA-member dealers, including but not limited to those with a significant number of single-person municipal branch offices, the benefits of participating in the FINRA Pilot Program include a reduction in travel time and expenses as well as the productivity gained from allowing FINRA-member dealers the flexibility of designing their own compliance protocol for on-site

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efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities, but may also include any additional economic analysis that the MSRB believes may inform the rulemaking process based on the facts and circumstances.

<sup>68</sup> The proposed rule change would apply specifically to dealers that are also FINRA-member dealers.

<sup>69</sup> Based on registration data provided by FINRA, as of May 20, 2024, the MSRB identified 11,139 municipal branch offices. These are locations where one or more associated persons are qualified as a municipal securities principal (Series 53), municipal fund securities limited principal (Series 51) or municipal securities representative (Series 52). The MSRB notes there is some double counting of municipal branch offices due to registration data provided by firms to FINRA listing a location twice as a municipal branch office.

inspections.<sup>70</sup> Relatedly, recent studies have shown that a reduction in travel time has been beneficial to maintaining employees, increasing productivity, and reducing costs.<sup>71</sup>

In addition, even if FINRA-member dealers choose not to participate in the FINRA Pilot Program, such dealers would still benefit from the alignment of MSRB Rule G-27 with the recently adopted FINRA Rule 3110.18. With an estimated 98% of MSRB registrants subject to FINRA's supervision rules, incongruity between MSRB Rule G-27 and adopted FINRA Rule 3110.18 would create confusion, uncertainty and an unnecessary burden for FINRA-member dealers and results in less operational efficiencies for such dealers. By eliminating potential areas of inconsistency between MSRB and FINRA rules, FINRA-member dealers would have a lower compliance burden and improved efficiency. A more efficient supervisory system for FINRA-member dealers may ultimately also benefit issuers and investors whom the rules are designed to protect, such as by ensuring dealers are able to focus time, attention, and resources on matters related to effecting transactions in municipal securities and advancing a fair and efficient market. The MSRB expects the benefits to accumulate over time.

### Costs

The MSRB expects that upfront costs would be minimal as it relates to municipal securities activities because it is expected that FINRA-member dealers will also be reviewing policies and procedures for other financial products such as corporate bonds. The MSRB estimates that FINRA-member dealers would need to make a one-time revision to their policies and procedures in accordance with the proposed rule change, including accounting for a risk assessment, eligibility criteria and conditions, written supervisory procedures as well as an effective supervisory system. To clarify, the upfront costs to update policies and procedures and associated training are primarily applicable to FINRA-member dealers that elect to conduct remote office inspections, with such costs being proportionately higher for smaller rather than larger dealers. However, the MSRB believes the total upfront costs would still be manageable, with an estimated incremental amount totaling approximately \$5,990 for participation in the

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<sup>70</sup> These benefits mirror those described in FINRA's Economic Impact Analysis as part of the Amendments to FINRA Rule 3110.18. See Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620, 28636-28637 (May 4, 2023) (File No. SR-FINRA-2023-007).

<sup>71</sup> See Aksoy, C., et al. (2023), "Time Savings When Working from Home," NBER Working Paper 30866, National Bureau of Economic Research (NBER), Cambridge, MA, <https://www.nber.org/papers/w30866>. In their paper, the authors identify that workers save an average of 72 minutes a day working from home. Id. at 3. With the extra time at home, the authors state that approximately 40% of that time goes to additional work productivity. Id. at 3. See also Criscuolo, C., et al. (2021), "The role of telework for productivity during and post-COVID-19: Results from an OECD survey among managers and workers," OECD Productivity Working Papers, No. 31, OECD Publishing, Paris, <https://doi.org/10.1787/7fe47de2-en> ("The relationship between firm-level labour productivity and the adoption rate of telework (before and during the crisis) was found to be robustly positive and significant."). Id. at 16-17.

FINRA Pilot Program for the three-year period, as shown in Table 1; therefore, the cost should not impose an onerous burden on these FINRA-member dealers that choose this option.<sup>72</sup> The MSRB estimates that it would take an inhouse attorney six hours to revise applicable policies and procedures pertaining to the municipal securities activities of the FINRA-member dealer. The MSRB also estimates that FINRA-member dealers may incur fees associated with the engagement of outside counsel to assist with any preparation and review of new policies and procedures; the estimated time is three hours for such work. In addition, the MSRB estimates that a compliance attorney will require two hours of training on the new procedures.<sup>73</sup> The MSRB believes the estimated one-time upfront cost would be offset by the cumulative compliance cost savings as a result of the consistency between MSRB Rule G-27 and FINRA Rule 3110 over time, as well as the cumulative cost savings, as described above, from the utilization of remote office inspection if a FINRA-member dealer chooses this option.<sup>74</sup>

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<sup>72</sup> This cost includes six hours for an in-house attorney to complete a revision of policies and procedures and three hours for an outside counsel to review any revisions. We estimate an in-house attorney's hourly rate as \$540 ( $\$540 \times 6 \text{ hours} = \$3,240$ ) for this work and outside counsel's hourly rate of \$570 ( $\$570 \times 3 \text{ hours} = \$1,710$ ). Lastly, we anticipate two hours for a compliance attorney to conduct training with an hourly rate of \$520 ( $\$520 \times 2 \text{ hours} = \$1,040$ ). In total, the MSRB estimates FINRA-member dealers will incur upfront costs totaling approximately \$5,990 ( $\$3,240 + \$1,710 + \$1,040 = \$5,990$ ) related to their participation in the FINRA Pilot Program for the three-year period.

<sup>73</sup> Id.

<sup>74</sup> For those FINRA-member dealers that opt into the FINRA Pilot Program, the change in process may impose additional costs on acquiring information technology compliance software and hardware upgrades to ensure adequate supervisory functions remotely. However, FINRA-member dealers likely made these technology upgrades and incurred cost in establishing supervisory controls appropriate to support mandatory work-from-home orders and shift to hybrid work arrangements during the COVID-19 pandemic. In addition, FINRA-member dealers that would opt for remote office inspections likely would do so for all securities rather than just for municipal securities; and therefore, would also opt into the FINRA Pilot Program for those asset classes as well. Therefore, the MSRB believes the incremental costs for upgrading the information technology would be negligible.



**Table 1. Estimate of Incremental Costs Based on 2024 Hourly Rates<sup>75</sup>**

<b>Cost Components</b>	<b>Hourly Rate</b>	<b>Number of Hours</b>	<b>Cost per Firm</b>
<b>Upfront Costs - Remote Supervision Pilot Program</b>			
a) In-House Attorney Revision of Policies and Procedures	\$ 540	6.0	\$ 3,240
b) Outside Counsel Review	\$ 570	3.0	\$ 1,710
c) Training	\$ 520	2.0	\$ 1,040
<b>Subtotal</b>			<b>\$ 5,990</b>
<b>Annual Ongoing Costs For Firms Choosing the Remote Supervision Pilot Program</b>			
a) Risk and Eligibility Requirement Assessment	\$ 520	3.0	\$ 1,560
b) Data Submission to FINRA	\$ 520	1.0	\$ 520
c) Continuing Education	\$ 520	2.0	\$ 1,040
<b>Subtotal</b>			<b>\$ 3,120</b>

The costs of annual ongoing compliance with the proposed rule change would likely be incremental for FINRA-member dealers already adopting the FINRA Pilot Program for other securities classes, as these firms would already be complying, or in the process of complying, with the language of FINRA Rule 3110.18. For those FINRA-member dealers that engage in municipal securities activities and that would choose to conduct remote office inspections by entering the FINRA Pilot Program in connection with discharging their supervisory activities under MSRB Rule G-27(d), the MSRB estimates about \$3,120 annually per FINRA-member

<sup>75</sup> The hourly rates data is gathered from the Commission's filing on "Amendments Regarding the Definition of "Exchange" and "Alternative Trading Systems (ATs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities." See Exchange Act Release No. 94062 (January 26, 2022), 87 FR 15496, 15624 (March 18, 2022) (File No. S7-02-22). The Commission's economic analysis utilizes the Securities Industry and Financial Markets Association, Management & Professional Earnings in the Securities Industry—2013 Report for the hourly rates of various financial industry market professionals. To compensate for inflation, the data reflects the 2024 hourly rate level after adjusting for the annual cumulative wage inflation rate of 37% between 2013 and 2023, and another 4% between 2023 and 2024. See The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry (available at <https://fred.stlouisfed.org/series/ECIWAG>). The number of hours for each task is based on the MSRB's internal estimate.

dealer for ongoing compliance costs.<sup>76</sup> These compliance costs include the incremental annual cost for FINRA-member dealers to conduct the required risk assessment, submit the required data points to FINRA on a quarterly basis, provide continuing education, and ensure that it is in compliance with the eligibility requirements.<sup>77</sup> Finally, the MSRB does not expect the proposed rule change would impose any cost on municipal entities or investors because FINRA-member dealers should realize cost savings resulting from greater operational efficiencies, which would offset the ongoing compliance costs related to complying with the FINRA Pilot Program.

### **Effect on Competition, Efficiency, and Capital Formation**

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change is applicable to all eligible FINRA-member dealers and is not expected to significantly affect the protection of investors and issuers. While upfront costs would be relatively higher for smaller-size rather than larger-size FINRA-member dealers, the MSRB expects the total one-time upfront costs to be manageable for FINRA-member dealers that elect to participate in the FINRA Pilot Program. The MSRB believes it is appropriate, in an environment with increased remote working personnel, to provide certain eligible FINRA-member dealers with the option for remote office inspection subject to certain conditions during the requisite time period by entering the FINRA Pilot Program. Since bank dealers are not covered in the proposed rule change for now, to the extent that some of those 18 bank dealers, as of 2023, would have wanted to avail themselves of conducting office inspections remotely, had the option been available to them, such bank dealers may be disadvantaged in their competition with other dealers. The MSRB, however, believes this disadvantage would be minimal because the MSRB understands through its outreach and engagement with some bank dealers that bank dealers generally have fewer OMSJs and municipal branch offices or locations than other dealers, so the use of a remote inspections pilot program may not be coveted for most bank dealers when weighing the called for processes and documentation requirements. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory consistency. At

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<sup>76</sup> FINRA-member dealers of various sizes may incur different amounts of ongoing costs. Therefore, the \$3,120 annually per firm represents an estimate for a mid-sized firm ("mid-sized" is defined by FINRA as a firm with 151-499 registered representatives).

<sup>77</sup> The MSRB currently estimates annual ongoing cost of six hours total for a risk and eligibility requirement assessment, data submission to FINRA on a quarterly basis and continuing education requirements. The MSRB estimates an hourly rate of \$520 for a compliance attorney to complete an annual risk and eligibility requirement assessment in approximately three hours. Additionally, the MSRB estimates one hour to complete the data submission to FINRA by a compliance attorney. Finally, the MSRB estimates that any drafting of annual continuing education requirements would take approximately two hours for a compliance attorney to complete, summing to a total of \$3,120 annually per FINRA-member dealer for ongoing compliance costs (i.e., 3 hours + 1 hour + 2 hours = 6 hours) x hourly rate of \$520 = \$3,120.

present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the benefits accumulated over time would outweigh the upfront costs of revising policies and procedures and the annual ongoing costs of ensuring compliance.

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

Written comments were not directly solicited on the proposed rule change.<sup>78</sup>

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

Not applicable.

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

The MSRB has designated the proposed rule change as being immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>79</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>80</sup> The proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. As noted above, the MSRB requests that the Commission designate the proposed rule change operative on July 1, 2024.

In accordance with Rule 19b-4(f)(6),<sup>81</sup> the MSRB 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 the proposed rule change, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Exchange Act.<sup>82</sup>

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

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<sup>78</sup> Comments received in response to FINRA’s recently adopted FINRA Pilot Program under FINRA Rule 3110.18 can be found at <https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007.htm>.

<sup>79</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>80</sup> 17 CFR 240.19b-4(f)(6).

<sup>81</sup> Id.

<sup>82</sup> 17 CFR 240.19b-4(f)(6)(iii).

The proposed rule change is based on, and materially conforms with the Commission's approval of FINRA's amendments to FINRA Rule 3110 with respect to Supplementary Material .18 thereof as filed in File No. SR-FINRA-2023-007, with the changes described in Item 3 hereof.<sup>83</sup>

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

Not applicable.

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

Not applicable.

**11. Exhibits**

Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 Text of Proposed Rule Change

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<sup>83</sup> See supra note 23.

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-MSRB-2024-05)  
Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend MSRB Rule G-27, on Supervision, to Allow Eligible Dealers to Fulfill Their Internal Inspection Obligation of Certain Offices and Locations Remotely for a Pilot Period, Subject to the Conditions Prescribed under FINRA’s Remote Inspections Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of an amendment to MSRB Rule G-27, on supervision, to adopt new Supplementary Material .05, on remote inspections pilot program, to allow certain brokers, dealers, and municipal securities dealers (“dealers”) that are members of a registered securities association (“FINRA-member dealers”)<sup>3</sup> to fulfill their internal inspection (“office inspection”) obligation with respect to certain offices and locations, as described herein, remotely for a specified period, subject to the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The MSRB notes that the Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association and will generally, as such, refer to FINRA specifically in the filing when intending to clarify specific regulatory obligations and/or applicable rule(s).

conditions of FINRA’s Remote Inspections Pilot Program (the “FINRA Pilot Program”) as established by FINRA Rule 3110.18 (the “proposed rule change”). Dealers that are not members of a registered securities association (i.e., FINRA), including bank dealers,<sup>4</sup> would be ineligible from conducting office inspections remotely.

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)<sup>5</sup> of the Exchange Act and Rule 19b-4(f)(6)<sup>6</sup> thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of July 1, 2024, for the proposed rule change to conform with the effective date of the FINRA Pilot Program.

The text of the proposed rule change is available on the MSRB’s website at <https://msrb.org/2024-SEC-Filings>, at the MSRB’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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of

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<sup>4</sup> A bank dealer is defined under MSRB Rule D-8 as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank. The MSRB will consider at a later date whether or not to extend the ability to conduct office inspections remotely to bank dealers after giving due consideration to how to operationalize such an initiative.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

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 proposed rule change is meant to more closely conform the MSRB's dealer supervisory rule to FINRA's recently approved supervisory requirements to help ensure a coordinated regulatory approach in the area of dealer supervision and to enable FINRA and the Commission to more efficiently inspect those dealers that are subject to both self-regulatory organizations, as well as to promote regulatory consistency for dealers engaging in activities across asset classes. To that end, the MSRB is proposing to adopt new Supplementary Material .05, on remote inspections pilot program, to allow FINRA-member dealers that engage in municipal securities activities to fulfill their office inspection obligation remotely for a period of three years starting on July 1, 2024 through June 30, 2027 (the "Pilot Period"), if certain conditions are met as prescribed under the proposed rule change in conjunction with the FINRA Pilot Program under FINRA Rule 3110.18. The specific compliance obligations are addressed below.

Background

MSRB Rule G-27(b), on supervisory system, requires dealers to establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules. As part of an overall supervisory system, dealers must conduct inspections of each of their offices or

locations: offices of municipal supervisory jurisdiction (“OMSJs”),<sup>7</sup> supervisory and non-supervisory municipal branch office,<sup>8</sup> and non-branch location<sup>9</sup> in accordance with MSRB Rule

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<sup>7</sup> Pursuant to MSRB Rule G-27(g)(i), a municipal branch office is classified as an OMSJ if any one of the following enumerated activities occurs at the location with respect to municipal securities: (i) order execution and/or market making; (ii) structuring of public offerings or private placements; (iii) maintaining custody of customers’ funds and/or municipal securities; (iv) final acceptance (approval) of new accounts on behalf of the member; (v) review and endorsement of customer orders, pursuant to subparagraph (c)(i)(G)(2); (vi) final approval of advertising for use by persons associated with the dealer, pursuant to MSRB Rule G-21(f); or (vii) responsibility for supervising the municipal securities activities of persons associated with the dealer at one or more other municipal branch offices of the dealer. An office that is designated as an OMSJ must have a registered principal on-site, pursuant to MSRB Rule G-27(b)(iv), and be inspected on an annual basis, pursuant to MSRB Rule G-27(d)(i)(A).

<sup>8</sup> Pursuant to MSRB Rule G-27(g)(ii)(A), a municipal branch office is any location where one or more associated persons of a dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any municipal security, or is held out as such, with the exclusion of such offices or locations identified in MSRB Rule G-27(g)(ii)(A)(1)-(7). Pursuant to MSRB Rule G-27(g)(ii)(B), notwithstanding the exclusions in MSRB Rule G-27(g)(ii)(A), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a municipal branch office (a/k/a supervisory municipal branch office). A non-supervisory municipal branch office would generally be deemed an office that is not charged with supervising the municipal securities activities of persons associated with the dealer.

<sup>9</sup> Pursuant to MSRB Rule G-27(g)(ii)(A), the following locations are excluded from registration as a municipal branch office, and are instead deemed non-branch locations: (i) a location established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (ii) an associated person’s primary residence provided it is not held out to the public as an office and certain other conditions are satisfied; (iii) a location, other than a primary residence, that is used for municipal securities activities for less than 30 business days in any one calendar year and is not held out to the public as an office, and which satisfies certain of the conditions set forth in the primary residence exception; (iv) a location of convenience, where associated persons occasionally and exclusively by appointment meet with customers and is not held out to the public as an office; (v) a location used primarily for non-securities activities and from which the associated person(s) effects no more than 25 municipal securities transactions in any one calendar year; (vi) the floor of a registered national securities exchange; and (vii) a temporary location established in response to the implementation of a business continuity plan. Non-branch locations will include residential supervisory locations as of June 1, 2024. See



G-27(d). Currently, MSRB Rule G-27(d)(i)(A) requires dealers to inspect every OMSJ and any supervisory municipal branch office at least annually. MSRB Rules G-27(d)(i)(B) and G-27(d)(i)(C) require dealers to inspect every non-supervisory municipal branch office at least every three years, and every non-branch location on a regular periodic<sup>10</sup> schedule. FINRA and the Commission's Office of Compliance Inspections and Examinations (now the Division of Examinations) staff have previously issued joint guidance stating that office inspections must be conducted on-site at the office;<sup>11</sup> however, the MSRB understands that the recent pandemic propelled increased use and reliance on technology solutions by dealers to surveil associated person's activities in a remote work environment.

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Exchange Act Release No. 100131 (May 14, 2024), 89 FR 43961 (May 20, 2024) (File No. SR-MSRB-2024-04).

<sup>10</sup> While MSRB rules do not explicitly establish a specific timeframe for such regular periodic inspections, FINRA Rule 3110.13 sets out a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., "red flags"), as defined in proposed Supplementary Material .05(b)(1) of MSRB Rule G-27, and if a FINRA-member dealer establishes a longer periodic inspection schedule, such dealer must document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

<sup>11</sup> See FINRA Regulatory Notice 11-54, FINRA and the SEC Issue Joint Guidance on Effective Policies and Procedures for Broker-Dealer Branch Inspections, (November 30, 2011), available at <https://www.finra.org/sites/default/files/NoticeDocument/p125204.pdf>. The MSRB amended MSRB Rule G-27 in 2006 to align with a series of rule changes by FINRA (f/k/a the National Association of Securities Dealers) and the New York Stock Exchange, which were meant to strengthen the supervisory control procedures of their member firms, including more stringent office inspection rules. The MSRB has favored regulatory consistency in order to avoid confusion between MSRB Rule G-27 and FINRA Rule 3110 and, consistent with this approach, the MSRB recognizes FINRA Regulatory Notice 11-54 and the core principle of on-site inspections with respect to dealer supervision. See Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400, 76403 (December 20, 2006) (File No. SR-MSRB-2006-10).

To help mitigate operational challenges and business disruption for dealers during the coronavirus disease (COVID-19) pandemic, including challenges related to having a vast number of individuals working from home and variations of telework arrangements, the MSRB has provided ongoing regulatory relief by allowing dealers to conduct their office inspections remotely, without an on-site visit to offices or locations, subject to certain conditions. The MSRB previously filed proposed rule changes for immediate effectiveness with the Commission in April 2020,<sup>12</sup> December 2020,<sup>13</sup> October 2021,<sup>14</sup> March 2022,<sup>15</sup> and November 2022<sup>16</sup> with, by and large, the collective relief allowing dealers to conduct office inspections for those respective calendar years remotely without an onsite visit to such offices or locations.<sup>17</sup> The most recent relief, provided in May 2023, allowed dealers to conduct office inspections due to be completed during the calendar year 2023 remotely through December 31, 2023, and office inspections due to be completed during the calendar year 2024 remotely through June 30, 2024.<sup>18</sup>

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<sup>12</sup> See Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR-MSRB-2020-01).

<sup>13</sup> See Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR-MSRB-2020-09).

<sup>14</sup> See Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR-MSRB-2021-06).

<sup>15</sup> See Exchange Act Release No. 94383 (March 9, 2022), 87 FR 14596 (March 15, 2022) (File No. SR-MSRB-2022-01).

<sup>16</sup> See Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR-MSRB-2022-08).

<sup>17</sup> See Supplementary Material .01(a) of MSRB Rule G-27.

<sup>18</sup> See Exchange Act Release No. 97423 (May 2, 2023), 88 FR 29774 (May 8, 2023) (File No. SR-MSRB-2023-04).

Similarly, in June 2020, FINRA<sup>19</sup> made its first of successive filings with the Commission, noting that ongoing extenuating circumstances warranted sensible and tailored accommodations for its member firms to meet their inspection obligations under FINRA Rule 3110(c).<sup>20</sup> FINRA went on to note that its proposed rule filing would create further efficiencies for its member firms by aligning with the MSRB's temporary extension of time for meeting the inspection requirements of offices set forth under MSRB Rule G-27.<sup>21</sup> In 2022, recognizing how operations and business models within the financial services industry have evolved during the public health crisis, including that a large number of firms have implemented a hybrid work environment in which particular business functions continue to be de-centralized, FINRA began a rulemaking process<sup>22</sup> that ultimately resulted, on November 17, 2023, in the Commission approving a proposed rule change to adopt the FINRA Pilot Program under Supplementary Material .18 of FINRA Rule 3110.<sup>23</sup> The FINRA Pilot Program consists of a voluntary, three-year remote inspections pilot program to allow eligible FINRA-member dealers to elect to fulfill

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<sup>19</sup> FINRA previously issued a request for comment in 2017 on a proposal to allow firms to conduct remote office inspections. See FINRA Regulatory Notice 17-38, Remote Branch Office Inspections, (November 13, 2017), available at [https://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-17-38.pdf](https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-38.pdf).

<sup>20</sup> See Exchange Act Release No. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (File No. SR-FINRA-2020-019).

<sup>21</sup> Id. at 40714.

<sup>22</sup> See Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144, 50147 (August 15, 2022) (File No. SR-FINRA-2022-021). FINRA later withdrew this proposal, available at <https://www.finra.org/sites/default/files/2023-04/sr-finra-2022-021-withdrawal.pdf>.

<sup>23</sup> See Exchange Act Release No. 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (File No. SR-FINRA-2023-007). Pursuant to FINRA Rule 3110.18(m), on the sunset of Rule 3110.17, if FINRA Rule 3110.17 has not already expired by its own terms, FINRA Rule 3110.17 will automatically sunset on June 30, 2024.

their office inspection obligations under FINRA Rule 3110 by conducting inspections of eligible offices of supervisory jurisdictions, branch offices, and non-branch locations remotely without an on-site visit to such locations subject to certain conditions and criteria.<sup>24</sup> The proposed rule change is designed to promote regulatory consistency for dealers that are both FINRA-member dealers and MSRB registrants.

#### Description of Proposed Rule Change

Proposed Supplementary Material .05 of MSRB Rule G-27 would provide eligible FINRA-member dealers<sup>25</sup> with the flexibility to opt into the FINRA Pilot Program, consisting of a voluntary, three-year remote inspections pilot program to fulfill their office inspection obligations under MSRB Rule G-27(d) by conducting inspections of eligible OMSJs, municipal branch offices, and non-branch locations remotely without an on-site visit to such locations, subject to certain conditions and criteria. The requirements in connection with the participation by FINRA-member dealers in the FINRA Pilot Program under proposed Supplementary Material .05 would mirror in all material respects the requirements with respect to FINRA-member dealers' participation under FINRA rules in the FINRA Pilot Program. FINRA-member dealers that engage in municipal securities activities and that are therefore subject to MSRB Rule G-27 would be able to opt into the FINRA Pilot Program with respect thereto. FINRA-member dealers opting into the FINRA Pilot Program would do so pursuant to the provisions of proposed Supplementary Material .05 of MSRB Rule G-27 and through the mechanisms and processes established by FINRA in connection with the FINRA Pilot Program.

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<sup>24</sup> Id.

<sup>25</sup> As previously noted, proposed Supplementary Material .05 of MSRB Rule G-27 would be applicable only to dealers that are FINRA members.

The proposed rule change also re-orders and streamlines some of the provisions of FINRA Rule 3110.18.

Scope (Proposed Supplementary Material .05(a) of MSRB Rule G-27)

Proposed Supplementary Material .05(a), on scope, of MSRB Rule G-27 would outline the scope of the proposed rule change establishing the standards by which a FINRA-member dealer may participate in the FINRA Pilot Program and mirrors the scope of the FINRA Pilot Program under FINRA Rule 3110.18(a). Proposed Supplementary Material .05(a) would permit FINRA-member dealers to avail themselves of the FINRA Pilot Program for the required inspections of OMSJs, municipal branch offices, and non-branch locations, in accordance with MSRB Rule G-27(d). As such, under proposed Supplementary Material .05(a), FINRA-member dealers would be able to participate in the FINRA Pilot Program for a period of three years, starting on July 1, 2024, and automatically sunset on June 30, 2027, if the proposed Supplementary Material .05 is not amended to allow continued participation by FINRA-member dealers in the FINRA Pilot Program.<sup>26</sup> FINRA-member dealers would not be able to participate in the FINRA Pilot Program after the prescribed provisions under this proposed Supplementary Material sunset. The purpose of the proposed rule change would be to allow FINRA-member dealers to participate in the FINRA Pilot Program while also meeting their compliance obligations under MSRB Rule G-27 in the same manner in which they are able to participate in the FINRA Pilot Program with respect to their parallel obligations under FINRA Rule 3110.18.

Risk Assessment (Proposed Supplementary Material .05(b) of MSRB Rule G-27)

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<sup>26</sup> The MSRB will engage with FINRA to understand the efficacy of remote office inspections based on FINRA's review of data and information provided to FINRA by FINRA-member dealers as required under the FINRA Pilot Program.

Proposed Supplementary Material .05(b), on risk assessment, of MSRB Rule G-27 would outline the need for FINRA-member dealers to undertake a risk assessment in order to participate in the FINRA Pilot Program and mirrors the risk assessment provisions required with respect to the FINRA Pilot Program under FINRA Rule 3110.18(b). Specifically, proposed Supplementary Material .05(b)(1) would provide that a FINRA-member dealer could elect to conduct the applicable inspection remotely, without an on-site visit for an office or location, when such dealer reasonably determines that the purposes of this Supplementary Material can be accomplished by conducting such required inspection remotely. The FINRA-member dealer would be required to develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for an office<sup>27</sup> or location prior to conducting a remote inspection. The risk assessment must document the factors considered, including, among other things, the FINRA-member dealer's size, organizational structure, scope of business activities, number and location of the FINRA-member dealer's offices, the nature and complexity of the products and services offered by the FINRA-member dealer, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of municipal securities representatives or associated persons, and any red flags, and must take into account any higher-risk activities that take place at, or higher-risk associated persons that are assigned to,

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<sup>27</sup> While MSRB rules do not define "office," in FINRA's 2005 rulemaking initiative to establish a uniform definition of branch office, FINRA noted that the language of the uniform definition substantially mirrored the Commission's definition of "office" in its books and records rules under the Exchange Act. Exchange Act Rule 17a-3(g)(i), defines the term as any location where one or more associated persons regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security (17 CFR 240.17a-3). See NASD Notice to Members 05-67 (October 6, 2005), available at <https://www.finra.org/sites/default/files/NoticeDocument/p015121.pdf>.

that office or location.<sup>28</sup> Additionally, proposed Supplementary Material .05(b)(1) would require a dealer to conduct an on-site inspection on the required cycle for such offices or locations that are not eligible for remote office inspections due to having not met the firm or location level requirements under proposed Supplementary Material .05(c) of MSRB Rule G-27.

Notwithstanding proposed Supplementary Material .05, a dealer shall remain subject to the other requirements of MSRB Rule G-27(d), on internal inspections.

Proposed Supplementary Material .05(b)(2), on other risk assessment factors, of MSRB Rule G-27 would provide that, in addition to the factors that FINRA-member dealers must consider as part of their risk assessment for remotely inspecting an office or location under Supplementary Material .05(b)(1), on review standards, FINRA-member dealers must consider, among other things, the following factors also contained in FINRA Rule 3110.18(b)(2), on other factors to consider for risk assessment:

- (i) the volume and nature of customer complaints;<sup>29</sup>
- (ii) the volume and nature of outside business activities, particularly investment-related;<sup>30</sup>

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<sup>28</sup> With one exception, these provisions of proposed Supplementary Material .05(b)(1) mirror FINRA Rule 3110.18(b)(1) with non-substantive terminology changes. However, FINRA Rule 3110.18(b)(1) refers to, without including within its text, a list of factors set forth in FINRA Rule 3110.12 as factors to be considered and documented with respect to the risk assessment required under FINRA Rule 3110.18(b)(1). Because MSRB Rule G-27 does not currently include a provision similar to FINRA Rule 3110.12, and therefore cannot include such factors by reference in the same manner as in FINRA Rule 3110.18(b)(1), proposed Supplementary Material .05(b)(1) of MSRB Rule G-27 lists such factors within the text thereof. Additionally, proposed Supplementary Material .05(b)(1) of MSRB Rule G-27 states that dealers must conduct an on-site inspection of that office or location on the applicable schedule under section (d) of MSRB Rule G-27.

<sup>29</sup> Proposed Supplementary Material .05(b)(2)(A), mirroring FINRA Rule 3110.18(b)(2)(A).

<sup>30</sup> Proposed Supplementary Material .05(b)(2)(B), mirroring FINRA Rule 3110.18(b)(2)(B).

- (iii) the volume and complexity of products offered;<sup>31</sup>
- (iv) the nature of the customer base, including vulnerable adult investors;<sup>32</sup>
- (v) whether associated persons are subject to heightened supervision;<sup>33</sup>
- (vi) failures by associated persons to comply with the FINRA-member dealer's written supervisory procedures;<sup>34</sup> and
- (vii) any recordkeeping violations.<sup>35</sup>

Proposed Supplementary Material .05(b)(2) would prescribe that FINRA-member dealers should conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk offices or locations or when there are red flags, and supervisory systems must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.<sup>36</sup>

The existing on-site office inspection obligation<sup>37</sup> under MSRB Rule G-27(d) has been an industry benchmark, imposing high standards regarding supervisory obligations. Therefore, in moving away from the existing standard, the MSRB believes the provisions of the proposed rule

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<sup>31</sup> Proposed Supplementary Material .05(b)(2)(C), mirroring FINRA Rule 3110.18(b)(2)(C).

<sup>32</sup> Proposed Supplementary Material .05(b)(2)(D), mirroring FINRA Rule 3110.18(b)(2)(D).

<sup>33</sup> Proposed Supplementary Material .05(b)(2)(E), mirroring FINRA Rule 3110.18(b)(2)(E).

<sup>34</sup> Proposed Supplementary Material .05(b)(2)(F), mirroring FINRA Rule 3110.18(b)(2)(F) with a non-substantive terminology change.

<sup>35</sup> Proposed Supplementary Material .05(b)(2)(G), mirroring FINRA Rule 3110.18(b)(2)(G).

<sup>36</sup> These provisions of proposed Supplementary Material .05(b)(2) mirror FINRA Rule 3110.18(b)(2), with elimination of certain cross-references to FINRA rules.

<sup>37</sup> See supra note 11.



change should include a risk assessment conducted by FINRA-member dealers under proposed Supplementary Material .05(b)(1), on review standards, to mitigate residual risk not addressed by the ineligibility criteria and the conditions contained in the FINRA Pilot Program. In addition, proposed Supplementary Material .05(b)(2), on other risk assessment factors, would provide additional guardrails to manage the risk associated with firms conducting remote office inspections under the FINRA Pilot Program.

Eligibility, Exclusions and Conditions - Firm Level Requirements (Proposed

Supplementary Material .05(c)(1) of MSRB Rule G-27)

FINRA Rule 3110.18(f)(1) outlines certain conditions that would render a member firm ineligible to conduct remote inspections of any of its offices or locations under the FINRA Pilot Program, if at any time during the Pilot Period, the member firm: (i) is or becomes designated as a restricted firm under FINRA Rule 4111; (ii) is or becomes designated as a taping firm under FINRA Rule 3170; (iii) receives a notice from FINRA, pursuant to FINRA Rule 9557, regarding capital compliance related matters under Rules 4110, 4120 or 4130; (iv) is or becomes suspended from FINRA membership; (v) has been a FINRA member for less than 12 months; or (vi) is or has been found by the Commission or FINRA to be in violation of office inspection obligations under FINRA Rule 3110(c) within the past three years.<sup>38</sup>

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<sup>38</sup> Notwithstanding the conditions outlined pursuant to FINRA 3110.18(f)(1), FINRA Rule 3110.18(k), on determination of ineligibility, states that FINRA may make a determination in the public interest and for the protection of investors that a member firm is no longer eligible to participate in the FINRA Pilot Program if such member firm fails to comply with the requirements of FINRA Rule 3110.18. In such instances, FINRA will provide written notice to the member firm of such determination that the member firm would no longer be eligible to participate in the FINRA Pilot Program and must conduct on-site inspections of required offices and locations in accordance with FINRA Rule 3110(c).

The MSRB believes that the aforementioned categories of ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for FINRA-member dealers that pose higher risks and, therefore, should result in ineligibility for the FINRA Pilot Program. As such, proposed Supplementary Material .05(c)(1)(A) of MSRB Rule G-27 would provide that a FINRA-member dealer is ineligible to conduct remote inspections of any of its offices or locations if the dealer is not a FINRA-member dealer or if at any time during the Pilot Period such dealer becomes ineligible under FINRA's prescribed ineligibility criteria to conduct remote inspections under the FINRA Pilot Program, pursuant to FINRA Rule 3110.18(f)(1). In addition, the MSRB believes the proposed ineligibility criteria would appropriately limit the potential population of FINRA Pilot Program participants to those FINRA-member dealers that may be better positioned to conduct remote inspections.

Additionally, under proposed Supplementary Material .05(c)(1)(B)(i) of MSRB Rule G-27, in support of a risk-based approach to using remote office inspections as a firm-level condition, the FINRA-member dealer would be required to have a recordkeeping system to make, maintain and preserve required records under applicable securities laws and regulations, including applicable MSRB rules, and the FINRA-member dealer's written supervisory procedures under MSRB Rule G-27(c). These records must not be maintained or preserved physically or electronically at the office or location subject to remote inspection, and the FINRA-member dealer must have prompt access to such records.<sup>39</sup> The MSRB notes that advancements in technology have changed the way in which FINRA-member dealers and their associated

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<sup>39</sup> Under Regulation S-P, on privacy of consumer financial information, dealers are required to have policies and procedures addressing the protection of customer information and records. See [17 C.F.R. 248.30](#).

persons conduct business and communicate with clients, with such activities of associated persons occurring, by and large, through centralized electronic systems and maintained or preserved electronically by the FINRA-member dealer rather than in paper form at offices or locations.<sup>40</sup> The MSRB understands that records may be created at an office or location subject to remote inspections, but not maintained at such office or location. Finally, as a further firm-level condition, FINRA-member dealers would be required under proposed Supplementary Material .05(c)(1)(B)(ii) of MSRB Rule G-27 to determine that their surveillance and technology tools are appropriate to supervise the types of risks presented by each remotely supervised office or location and sets out examples of types of potential surveillance and technology tools that FINRA-member dealers might consider using. These provisions mirror the provisions of FINRA Rule 3110.18(f)(2), with appropriate cross-reference changes to the applicable MSRB rule provision.

Eligibility, Exclusions and Conditions - Location Level Requirements (Proposed Supplementary Material .05(c)(2) of MSRB Rule G-27)

FINRA Rule 3110.18(g) lists the criteria under the FINRA Pilot Program that would render a particular office or location ineligible for remote office inspection. Under FINRA Rule 3110.18(g)(1), offices or locations would be ineligible for a remote office inspection if at any time during the FINRA Pilot Period:

- (i) one or more associated persons at such office or location is or becomes subject to a mandatory heightened supervisory plan under the rules of FINRA, the Commission, or a state regulatory agency;

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<sup>40</sup> See Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620, 28622 and 28623 (May 4, 2023) (File No. SR-FINRA-2023-007) (Notice of Filing).

- (ii) one or more associated persons at such office or location is or becomes 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 firm and is not subject to a mandatory heightened supervision plan as a condition to approval or permission for such association;<sup>41</sup>
- (iii) the firm is or becomes subject to FINRA Rule 1017(a)(7) as a result of one or more associated persons at such office or location;
- (iv) one or more associated persons at such office or location has an event in the prior three years that required a “yes” response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer) or similar form by a registered securities association;<sup>42</sup>
- (v) one or more associated persons at such office or location is or becomes subject to a disciplinary action taken by the firm that is or was reportable under FINRA Rule 4530(a)(2);
- (vi) one or more associated persons at such office or location is engaged in proprietary trading, including the incidental crossing of customer orders, or the direct supervision of such activities; or
- (vii) the office or location handles customer funds or securities.

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<sup>41</sup> The language mirrors the text of FINRA Rule 3110.18(g)(1)(B) with the exception of the cross-reference to paragraph (g)(1)(A) of FINRA Rule 3110.18.

<sup>42</sup> The language substantively mirrors the text of FINRA Rule 3110.18(g)(1)(D). The textual changes include the title of Form U-4 and the addition of the phrase “or similar form by a registered securities association.”

The MSRB believes that the aforementioned categories of location-level ineligibility are events or activities that are more likely to raise investor protection concerns because they expressly account for activities within offices or locations that pose higher risks and, therefore, such offices or locations should be ineligible for the FINRA Pilot Program. As such, proposed Supplementary Material .05(c)(2)(A), on office or location requirements, of MSRB Rule G-27 would provide that a FINRA-member dealer is ineligible to conduct remote inspection of an office or location if at any time during the Pilot Period such office or location becomes ineligible for remote inspection under the prescribed FINRA requirements relating to location-level ineligibility for participation in the FINRA Pilot Program under FINRA Rule 3110.18(g)(1).

In addition, as part of the requirement to develop a reasonably designed risk-based approach to using remote inspections, and the requirement to conduct and document a risk assessment, proposed Supplementary Material .05(c)(2)(B), on office or location requirements, of MSRB Rule G-27 would require that a specific office or location of the FINRA-member dealer satisfy the following conditions to be eligible for remote inspections under the FINRA Pilot Program:

- (i) electronic communications (e.g., e-mail) are made through the FINRA-member dealer's electronic system;<sup>43</sup>
- (ii) the associated person's correspondence and communications with the public are subject to the FINRA-member dealer's supervision in accordance with MSRB Rule G-27(e);<sup>44</sup> and

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<sup>43</sup> Proposed Supplementary Material .05(c)(2)(B)(i), mirroring FINRA Rule 3110.18(g)(2)(A) with a non-substantive terminology change.

<sup>44</sup> Proposed Supplementary Material .05(c)(2)(B)(ii), mirroring FINRA Rule 3110.18(g)(2)(B) with appropriate cross-reference change to the applicable MSRB rule provision and a non-substantive terminology change.

- (iii) no books or records of the FINRA-member dealer required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable MSRB rules, and such FINRA-member dealer's own written supervisory procedures under MSRB Rule G-27(c) are physically or electronically maintained and preserved at such office or location.<sup>45</sup>

A FINRA-member dealer's office inspection program is a necessary part of its supervisory system and supports a culture of compliance because it provides an additional level of oversight and safeguards against risk; therefore, the conditions and eligibility exclusions at the firm and location level are appropriate to ensure the efficacy of remote inspections undertaken pursuant to the FINRA Pilot Program as they will provide safeguards that will help ensure that firms maintain effective supervision when conducting remote inspections. In addition, the MSRB believes that keeping the firm and location-level eligibility criteria consistent with FINRA-amended rules would avoid regulatory inconsistencies in the application and use of remote office inspections by FINRA-member dealers participating in the FINRA Pilot Program by subjecting such dealers to the same supervisory framework.

Written Supervisory Procedures for Remote Inspections (Proposed Supplementary Material .05(d) of MSRB Rule G-27)

Consistent with their obligations under FINRA Rule 3110(b), on written procedures, FINRA Rule 3110.18(c), on written supervisory procedures for remote inspections, requires member firms that elect to participate in the FINRA Pilot Program to establish, maintain, and

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<sup>45</sup> Proposed Supplementary Material .05(c)(2)(B)(iii), mirroring FINRA Rule 3110.18(g)(2)(C) with appropriate cross-reference changes to applicable MSRB rule provisions and a non-substantive terminology change.

enforce written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Under proposed Supplementary Material .05(d), on written supervisory procedures for remote inspections, of MSRB Rule G-27, FINRA-member dealers electing to participate in the FINRA Pilot Program would be required, consistent with their obligations under MSRB Rule G-27(c), to establish, maintain, and enforce written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, including applicable MSRB rules. These reasonably designed procedures, at a minimum, must address:

- (i) the methodology, including technology, that may be used to conduct remote inspections;<sup>46</sup>
- (ii) the factors considered in the risk assessment made for each applicable office or location pursuant to proposed Supplementary Material .05(b);<sup>47</sup> and
- (iii) the use of other risk-based systems employed generally by the FINRA-member dealer to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, including applicable MSRB rules.<sup>48</sup>

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<sup>46</sup> Proposed Supplementary Material .05(d)(1), mirroring FINRA Rule 3110.18(c)(1).

<sup>47</sup> Proposed Supplementary Material .05(d)(2), mirroring FINRA Rule 3110.18(c)(2).

<sup>48</sup> Proposed Supplementary Material .05(d)(3), mirroring FINRA Rule 3110.18(c)(4) with a non-substantive terminology change. FINRA Rule 3110.18(c)(3) is addressed in proposed Supplementary Material .05(g) discussed below.

Effective Supervisory System (Proposed Supplementary Material .05(e) of MSRB Rule G-27)

FINRA Rule 3110.18(d), on effective supervisory system, provides that a FINRA-member dealer's use of remote inspection of an office or location will be held to the same standards for reasonable review as set forth under FINRA Rule 3110.12. FINRA Rule 3110.18(d) also provides where a firm's remote inspection of an office or location identifies any red flags, the firm 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.

Proposed Supplementary Material .05(e), on effective supervisory system, of MSRB Rule G-27 would mirror FINRA Rule 3110.18(d) by reiterating that the requirement to conduct inspections of offices and locations is one part of the FINRA-member dealer's overall obligation to have an effective supervisory system. Therefore, a FINRA-member dealer must maintain its ongoing review of the activities and functions at all offices and locations regardless of whether such FINRA-member dealer conducts inspections remotely, and that a FINRA-member dealer's use of remote inspection of an office or location would be subject to the same standards for review as for other offices or locations under MSRB Rule G-27 in addition to the standard set forth under this Supplementary Material.<sup>49</sup> Additionally, proposed Supplementary Material .05(e) would state that, where a FINRA-member dealer detects red flags through a remote

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<sup>49</sup> FINRA Rule 3110.18(d), on effective supervisory system, refers to the standards for office or location reviews under FINRA Rule 3110.12, on reasonable standards of review, and states that remote office inspections are subject to the same standards as other inspections. Supplementary Material .05(e) of MSRB Rule G-27 explicitly incorporates within the text that the same standards for review apply for on-site and remote inspections.



inspection, the FINRA-member dealer may need to impose additional supervisory procedures or provide more frequent monitoring for that office or location, which could include a subsequent on-site visit on an announced or unannounced basis. The MSRB believes that the supervisory system requirements in the proposed rule change, consistent with the FINRA Pilot Program, would assist in managing potential risks associated with dealers conducting remote office inspections.

Documentation Requirement (Proposed Supplementary Material .05(f) of MSRB Rule G-27)

FINRA Rule 3110.18(e) contains documentation requirements for member firms participating in the FINRA Pilot Program. In particular, FINRA Rule 3110.18(e) requires member firms to maintain and preserve a centralized record for each Pilot Year, as defined under FINRA Rule 3110.18(l) (a “Pilot Year”),<sup>50</sup> that separately identifies all offices or locations that were inspected remotely and any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring as a result of the remote office inspection. In addition, FINRA Rule 3110.18(e) requires the documentation of the results of a remote inspection for an office or location to identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the

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<sup>50</sup> The textual changes include the reference to FINRA Rule 3110.18(l). FINRA Rule 3110.18(l) defines Pilot Year as the following: (1) Pilot Year 1 is the period beginning on July 1, 2024 and ending on December 31 of the same year; (2) Pilot Year 2 means the calendar year period following Pilot Year 1, beginning on January 1 and ending on December 31; (3) Pilot Year 3 means the calendar year period following Pilot Year 2, beginning on January 1 and ending on December 31; and (4) if applicable, where Pilot Year 1 covers a period that is less than a full calendar year, then Pilot Year 4 means the period following Pilot Year 3, beginning on January 1 and ending on June 30, 2027.

remote inspection, including whether an on-site inspection was conducted at such office or location.

Consistent with the FINRA provision, proposed Supplementary Material .05(f), on documentation requirement, of MSRB Rule G-27 would mirror such documentation requirements for FINRA-member dealers opting to avail themselves of the FINRA Pilot Program. Specifically, proposed Supplementary Material .05(f) would require such dealers to maintain and preserve a centralized record for each of the Pilot Years, within the meaning of the FINRA Pilot Program. In addition, proposed Supplementary Material .05(f) would require FINRA-member dealers to identify all offices or locations that were inspected remotely and any offices or locations for which such dealer determined to impose additional supervisory procedures or more frequent monitoring, as provided in proposed Supplementary Material .05(e), on effective supervisory system, of MSRB Rule G-27. Moreover, a FINRA-member dealer's documentation of the results of a remote inspection of an office or location would need to identify any additional supervisory procedures or more frequent monitoring of such 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. The MSRB believes that these requirements would assist in tracking and documenting the efficacy of the FINRA-member dealer's remote inspections.

Data and Information Collection Requirement (Proposed Supplementary Material .05(g) of MSRB Rule G-27)

FINRA Rule 3110.18(h) outlines requirements for member firms that elect to participate in the FINRA Pilot Program to collect specific data and information as part of the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(h) requires firms to collect specific data points and

to provide such data and information to FINRA on a quarterly basis, in the manner and format determined by FINRA,<sup>51</sup> including: (i) the number of offices and locations with an inspection completed during each calendar quarter;<sup>52</sup> (ii) the number of those offices or locations in each calendar quarter that were inspected remotely;<sup>53</sup> (iii) the number of those offices or locations in each calendar quarter that were the subject of an on-site inspection, as well as the number of such inspections that were on-site because of a finding;<sup>54</sup> (iv) the number of offices and locations for which a remote office inspection was conducted in the calendar quarter that identified a finding, the number of findings, a list of the significant findings;<sup>55</sup> and (v) the number of locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the significant findings.<sup>56</sup> Moreover, dealers are required to provide FINRA with their written supervisory procedures for remote inspections that account for escalating significant findings; new hires; supervising brokers with a significant history of misconduct; and outside business activities and “doing business as” (or DBA) designations.<sup>57</sup> In

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<sup>51</sup> FINRA Rule 3110.18(h)(1) notes that FINRA-member dealers must provide separate counts for offices of supervisory jurisdiction (“OSJs”), supervisory branch offices, non-supervisory branch offices, and non-branch locations. FINRA office categories correspond to the MSRB office categories contained in MSRB Rule G-27.

<sup>52</sup> See FINRA Rule 3110.18(h)(1)(A).

<sup>53</sup> See FINRA Rule 3110.18(h)(1)(B).

<sup>54</sup> See FINRA Rule 3110.18(h)(1)(C) and (D). Pursuant to FINRA Rule 3110.18(h)(1), a finding means a discovery made during an inspection that led to a remedial action or was listed on the member’s inspection report.

<sup>55</sup> See FINRA Rule 3110.18(h)(1)(E).

<sup>56</sup> See FINRA Rule 3110.18(h)(1)(F).

<sup>57</sup> See FINRA Rule 3110.18(h)(1)(G).

addition, FINRA Rule 3110.18(h)(2) outlines requirements for member firms electing to participate in the FINRA Pilot Program to provide certain data and information for Pilot Year 1 if it is less than a full calendar year<sup>58</sup> and FINRA Rule 3110.18(h)(3) lists additional data and information to be provided to FINRA for calendar year 2019 for member firms electing to participate in the FINRA Pilot Program.

The MSRB believes that requiring certain data and information to be collected and periodically provided to FINRA is critical to evaluating the effectiveness of remote office inspections during the Pilot Period, including to determine if the Pilot Program should be extended or made permanent.<sup>59</sup> Proposed Supplementary Material .05(g), on data and information collection requirement, of MSRB Rule G-27 would require FINRA-member dealers to comply with the requirements of FINRA with respect to the collection and submission of specified data and information, and in the manner and format required under the FINRA Pilot Program. Furthermore, proposed Supplementary Material .05(g) of MSRB Rule G-27, which substantially mirrors FINRA Rule 3110.18(h)(4) would require FINRA-member dealers that elect to participate in the FINRA Pilot Program to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with any specified data and information collection, and transmission requirements prescribed by FINRA.

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<sup>58</sup> FINRA Rule 3110.18(h)(2) also contains language that addresses providing counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations if Pilot Year 1 covers a period less than a full calendar year.

<sup>59</sup> As previously mentioned, the MSRB will engage with FINRA to understand the efficacy of remote office inspections based on FINRA's review of data and information provided to FINRA by FINRA-member dealers as required under the FINRA Pilot Program. More specifically, the examination of the municipal securities activities of FINRA-member dealers would aid the MSRB's understanding of the efficacy of remote office inspections.

Election to Participate in Remote Inspections Pilot Program (Proposed Supplementary Material .05(h) of MSRB Rule G-27)

FINRA Rule 3110.18(i) specifies how a firm elects to participate in, or subsequently withdraws from, the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(i) states that a firm must, at least five calendar days before the beginning of a Pilot Year, provide FINRA an "opt-in notice" in the manner and format determined by FINRA.<sup>60</sup> Moreover, FINRA Rule 3110.18(i) specifies that a FINRA member that elects to withdraw from subsequent Pilot Years (i.e., Pilot Year 2, Pilot Year 3, and Pilot Year 4, if applicable) shall, at least five calendar days before the end of the then current Pilot Year, provide FINRA with an "opt-out notice" in the manner and format determined by FINRA.<sup>61</sup>

Proposed Supplementary Material .05(h), on election to participate, of MSRB Rule G-27 would require FINRA-member dealers electing to participate in the FINRA Pilot Program to make their election in the manner and format as prescribed, in accordance with FINRA Rule 3110.18(i). In addition, proposed Supplementary Material .05(h) would require FINRA-member dealers that elect to withdraw from the FINRA Pilot Program for subsequent years to provide such notice to FINRA in the manner and format as prescribed in accordance with FINRA Rule 3110.18(i). These requirements will ensure that FINRA-member dealers can properly elect to participate in, or subsequently withdraw from, the FINRA Pilot Program while satisfying requirements in accordance with MSRB Rule G-27(d) on office inspections.

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<sup>60</sup> FINRA Rule 3110.18(i) also contains provisions for firms wishing to opt-out of the FINRA Pilot Program.

<sup>61</sup> FINRA may, in exceptional cases and where good cause is shown, waive the applicable timeframes for the required opt-in or opt-out notices.

Failure to Satisfy Conditions (Proposed Supplementary Material .05(i) of MSRB Rule G-27)

FINRA Rule 3110.18(j), on failure to satisfy conditions, addresses situations in which a member firm fails to satisfy the requirements for participating in the FINRA Pilot Program. Specifically, FINRA Rule 3110.18(j) states that member firms that fail to satisfy the conditions set forth to avail themselves of the FINRA Pilot Program, including the requirement to timely collect and submit the data and information to FINRA as set forth under FINRA Rule 3110.18(h), shall be ineligible to participate in the FINRA Pilot Program. Such member firms would be required to conduct on-site inspections of each office and location on the required cycle in accordance with FINRA Rule 3110(c) on internal inspections.

Consistent with FINRA Rule 3110.18(j), proposed Supplementary Material .05(i), on failure to satisfy conditions, of MSRB Rule G-27 would specify that any FINRA-member dealer that fails to satisfy the conditions of proposed Supplementary Material .05 of MSRB Rule G-27 and of FINRA Rule 3110.18, including the specified requirement to timely collect and submit data, would no longer be eligible to participate in the FINRA Pilot Program. Such FINRA-member dealers would need to conduct on-site inspections of each office and location on the required cycle in accordance with MSRB Rule G-27(d), on internal inspections.

While FINRA has adopted FINRA Rule 3110.18(k), on determination of ineligibility, and FINRA Rule 3110.18(m), on the sunset of FINRA Rule 3110.17, the proposed rule change does not incorporate similar provisions since FINRA solely makes the determination regarding FINRA-member dealers' participation in the FINRA Pilot Program and the sunset of the FINRA relief under FINRA Rule 3110.17, and therefore those provisions would not be applicable. The MSRB specifically references and explains these provisions in describing

adopted FINRA Rule 3110.18 within the filing. In addition, for purposes of the proposed rule change, the terms defined in FINRA Rule 3110.18(l) are used herein with the same meaning as set forth in FINRA Rule 3110.18(l).

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,<sup>62</sup> which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

In accordance with Section 15B(b)(2)(C) of the Exchange Act,<sup>63</sup> the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the proposed rule change would allow FINRA-member dealers to participate in the FINRA Pilot Program in a manner intended to provide a practical and balanced way for such dealers to continue effectively meeting their core regulatory obligations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable MSRB rules, which directly serves investor protection. The MSRB has noticed that there has been a shift

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<sup>62</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>63</sup> Id.

towards adopting work from home models due to carryover from the conditions associated with the COVID-19 pandemic, and the criteria and conditions contained within the proposed rule change are designed to accommodate this shift and allow firms to supplement their existing inspection programs with the option to conduct remote inspections at offices or locations where such remote inspections satisfy the proposed conditions in the proposed rule change, and are consistent with a reasonably designed supervisory system, while also minimizing associated risks, as much as possible, to investor protections. The risk assessment required by the proposed rule change will further mitigate residual risk not addressed by the ineligibility criteria and the affirmative conditions imposed to participate in the FINRA Pilot Program. As such, the proposed rule change is designed to minimize risks by limiting which offices or locations can be inspected remotely while also setting conditions for FINRA-member dealers wishing to partake in remote office inspections. The robust nature of the criteria that must be satisfied and circumstances that would make a location ineligible for remote office inspections serve an important role in reducing the potential for fraud and manipulative acts. For example, the terms of the proposed rule change would include important safeguards, such as requiring risk assessments, supplemental written supervisory procedures related to remote inspections, and documentation for FINRA-member dealers wishing to engage in remote office inspections, which furthers the prevention of manipulative acts and practices and protection of investors, municipal entities, obligated persons and the public interest. FINRA-member dealers are required to determine that their surveillance and technology tools are appropriate to supervise remote office inspections in furtherance of preventing fraudulent and manipulative acts and practices.

By permitting FINRA-member dealers to avail themselves of remote office inspections for the requisite period by use of the FINRA Pilot Program, such dealers are receiving the same



benefit, regardless of asset class, of being able to deploy their resources in a manner that maximizes efficiencies, which promotes just and equitable principles of trade, through regulatory consistency for FINRA -member dealers and MSRB registrants. The MSRB believes that the proposed rule change would facilitate transactions in municipal securities and remove impediments to a free and open market because, by ensuring a consistent regulatory framework for which FINRA-member dealers can avail themselves of remote office inspections, the proposed rule change would alleviate some of the operational challenges such dealers would otherwise experience, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products.

Finally, aligning the proposed rule change with adopted FINRA Rule 3110.18 and thereby making such requirements specifically applicable to FINRA-member dealers' municipal securities activities fosters cooperation between regulators, because it creates as close as possible a uniform standard, with minimal distinction needed between the treatment of municipal securities and other asset classes, enabling FINRA and the Commission to more efficiently inspect dealers subject to the rules of both self-regulatory organizations.

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

Section 15B(b)(2)(C) of the Exchange Act<sup>64</sup> requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB has considered the economic impact of the proposed rule change and believes that the proposed rule change would not impose any unnecessary or inappropriate burden on competition, as the proposed rule change would align with the adoption

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<sup>64</sup>

Id.

of FINRA Rule 3110.18 allowing remote office inspections by FINRA members, for a requisite period of time, by participating in the FINRA Pilot Program. In addition, the proposed rule change would be applied equally to all dealers that are FINRA-member dealers.<sup>65</sup> Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>66</sup>

In determining whether these standards have been met, the MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>67</sup> In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change. The proposed rule change would amend MSRB Rule G-27 to provide a mechanism for FINRA-member dealers to participate in the FINRA Pilot Program.<sup>68</sup> The proposed rule change is intended to align MSRB Rule G-27 with the adopted FINRA Rule 3110.18, which established

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<sup>65</sup> As previously mentioned, the MSRB will consider amendments to MSRB Rule G-27 at a later date on whether the proposed rule change should be extended to other dealers under MSRB rules, such as bank dealers.

<sup>66</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>67</sup> See Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>. In evaluating whether there was any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on efficiency, capital formation and competition, and the main reasonable alternative regulatory approaches. For those rule changes which the MSRB files for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act (15 U.S.C. 78s(b)(3)(A)), while not subject to the policy, the MSRB usually focuses its examination exclusively on the burden of competition on regulated entities, but may also include any additional economic analysis that the MSRB believes may inform the rulemaking process based on the facts and circumstances.

<sup>68</sup> The proposed rule change would apply specifically to dealers that are also FINRA-member dealers.

the FINRA Pilot Program, providing an option for FINRA-member dealers to fulfill their office inspection obligations by conducting inspections of some or all branch offices and locations remotely without an on-site visit to such offices or locations. The MSRB also believes the proposed rule change would be appropriate as some dealers' business model and work environment continue to evolve with ongoing technological advancements, and the shift to remote working may have accelerated since the COVID-19 pandemic.

### Benefits

The MSRB believes that the proposed rule change would benefit FINRA-member dealers by offering a remote office inspection option to such eligible dealers, subject to certain conditions, while minimizing the potential of harm to issuers and investors who benefit from the current supervisory framework. Specifically, the MSRB believes that FINRA-member dealers would have sufficient capability in carrying out their office inspection duties remotely while minimizing the impact on the quality of office inspections. The proposed rule change would therefore lower costs for FINRA-member dealers that choose the remote office inspection option by participating in the FINRA Pilot Program. The MSRB has identified approximately 11,000 municipal branch offices, which are inclusive of single-person municipal branch offices.<sup>69</sup> For all FINRA-member dealers, including but not limited to those with a significant number of single-person municipal branch offices, the benefits of participating in the FINRA Pilot Program include a reduction in travel time and expenses as well as the productivity gained from allowing

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<sup>69</sup> Based on registration data provided by FINRA, as of May 20, 2024, the MSRB identified 11,139 municipal branch offices. These are locations where one or more associated persons are qualified as a municipal securities principal (Series 53), municipal fund securities limited principal (Series 51) or municipal securities representative (Series 52). The MSRB notes there is some double counting of municipal branch offices due to registration data provided by firms to FINRA listing a location twice as a municipal branch office.

FINRA-member dealers the flexibility of designing their own compliance protocol for on-site inspections.<sup>70</sup> Relatedly, recent studies have shown that a reduction in travel time has been beneficial to maintaining employees, increasing productivity, and reducing costs.<sup>71</sup>

In addition, even if FINRA-member dealers choose not to participate in the FINRA Pilot Program, such dealers would still benefit from the alignment of MSRB Rule G-27 with the recently adopted FINRA Rule 3110.18. With an estimated 98% of MSRB registrants subject to FINRA's supervision rules, incongruity between MSRB Rule G-27 and adopted FINRA Rule 3110.18 would create confusion, uncertainty and an unnecessary burden for FINRA-member dealers and results in less operational efficiencies for such dealers. By eliminating potential areas of inconsistency between MSRB and FINRA rules, FINRA-member dealers would have a lower compliance burden and improved efficiency. A more efficient supervisory system for FINRA-member dealers may ultimately also benefit issuers and investors whom the rules are designed to protect, such as by ensuring dealers are able to focus time, attention, and resources on matters

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<sup>70</sup> These benefits mirror those described in FINRA's Economic Impact Analysis as part of the Amendments to FINRA Rule 3110.18. See Exchange Act Release No. 97398 (April 28, 2023), 88 FR 28620, 28636-28637 (May 4, 2023) (File No. SR-FINRA-2023-007).

<sup>71</sup> See Aksoy, C., et al. (2023), "Time Savings When Working from Home," NBER Working Paper 30866, National Bureau of Economic Research (NBER), Cambridge, MA, <https://www.nber.org/papers/w30866>. In their paper, the authors identify that workers save an average of 72 minutes a day working from home. Id. at 3. With the extra time at home, the authors state that approximately 40% of that time goes to additional work productivity. Id. at 3. See also Criscuolo, C., et al. (2021), "The role of telework for productivity during and post-COVID-19: Results from an OECD survey among managers and workers," OECD Productivity Working Papers, No. 31, OECD Publishing, Paris, <https://doi.org/10.1787/7fe47de2-en> ("The relationship between firm-level labour productivity and the adoption rate of telework (before and during the crisis) was found to be robustly positive and significant."). Id. at 16-17.

related to effecting transactions in municipal securities and advancing a fair and efficient market. The MSRB expects the benefits to accumulate over time.

### Costs

The MSRB expects that upfront costs would be minimal as it relates to municipal securities activities because it is expected that FINRA-member dealers will also be reviewing policies and procedures for other financial products such as corporate bonds. The MSRB estimates that FINRA-member dealers would need to make a one-time revision to their policies and procedures in accordance with the proposed rule change, including accounting for a risk assessment, eligibility criteria and conditions, written supervisory procedures as well as an effective supervisory system. To clarify, the upfront costs to update policies and procedures and associated training are primarily applicable to FINRA-member dealers that elect to conduct remote office inspections, with such costs being proportionately higher for smaller rather than larger dealers. However, the MSRB believes the total upfront costs would still be manageable, with an estimated incremental amount totaling approximately \$5,990 for participation in the FINRA Pilot Program for the three-year period, as shown in Table 1; therefore, the cost should not impose an onerous burden on these FINRA-member dealers that choose this option.<sup>72</sup> The MSRB estimates that it would take an inhouse attorney six hours to revise applicable policies

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<sup>72</sup> This cost includes six hours for an in-house attorney to complete a revision of policies and procedures and three hours for an outside counsel to review any revisions. We estimate an in-house attorney's hourly rate as \$540 ( $\$540 \times 6 \text{ hours} = \$3,240$ ) for this work and outside counsel's hourly rate of \$570 ( $\$570 \times 3 \text{ hours} = \$1,710$ ). Lastly, we anticipate two hours for a compliance attorney to conduct training with an hourly rate of \$520 ( $\$520 \times 2 \text{ hours} = \$1,040$ ). In total, the MSRB estimates FINRA-member dealers will incur upfront costs totaling approximately \$5,990 ( $\$3,240 + \$1,710 + \$1,040 = \$5,990$ ) related to their participation in the FINRA Pilot Program for the three-year period.

and procedures pertaining to the municipal securities activities of the FINRA-member dealer. The MSRB also estimates that FINRA-member dealers may incur fees associated with the engagement of outside counsel to assist with any preparation and review of new policies and procedures; the estimated time is three hours for such work. In addition, the MSRB estimates that a compliance attorney will require two hours of training on the new procedures.<sup>73</sup> The MSRB believes the estimated one-time upfront cost would be offset by the cumulative compliance cost savings as a result of the consistency between MSRB Rule G-27 and FINRA Rule 3110 over time, as well as the cumulative cost savings, as described above, from the utilization of remote office inspection if a FINRA-member dealer chooses this option.<sup>74</sup>

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<sup>73</sup> Id.

<sup>74</sup> For those FINRA-member dealers that opt into the FINRA Pilot Program, the change in process may impose additional costs on acquiring information technology compliance software and hardware upgrades to ensure adequate supervisory functions remotely. However, FINRA-member dealers likely made these technology upgrades and incurred cost in establishing supervisory controls appropriate to support mandatory work-from-home orders and shift to hybrid work arrangements during the COVID-19 pandemic. In addition, FINRA-member dealers that would opt for remote office inspections likely would do so for all securities rather than just for municipal securities; and therefore, would also opt into the FINRA Pilot Program for those asset classes as well. Therefore, the MSRB believes the incremental costs for upgrading the information technology would be negligible.

**Table 1. Estimate of Incremental Costs Based on 2024 Hourly Rates<sup>75</sup>**

<b>Cost Components</b>	<b>Hourly Rate</b>	<b>Number of Hours</b>	<b>Cost per Firm</b>
Upfront Costs - Remote Supervision Pilot Program			
a) In-House Attorney Revision of Policies and Procedures	\$ 540	6.0	\$ 3,240
b) Outside Counsel Review	\$ 570	3.0	\$ 1,710
c) Training	\$ 520	2.0	\$ 1,040
<b>Subtotal</b>			<b>\$ 5,990</b>
Annual Ongoing Costs For Firms Choosing the Remote Supervision Pilot Program			
a) Risk and Eligibility Requirement Assessment	\$ 520	3.0	\$ 1,560
b) Data Submission to FINRA	\$ 520	1.0	\$ 520
c) Continuing Education	\$ 520	2.0	\$ 1,040
<b>Subtotal</b>			<b>\$ 3,120</b>

The costs of annual ongoing compliance with the proposed rule change would likely be incremental for FINRA-member dealers already adopting the FINRA Pilot Program for other securities classes, as these firms would already be complying, or in the process of complying, with the language of FINRA Rule 3110.18. For those FINRA-member dealers that engage in

<sup>75</sup> The hourly rates data is gathered from the Commission’s filing on “Amendments Regarding the Definition of “Exchange” and “Alternative Trading Systems (ATs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities.” See Exchange Act Release No. 94062 (January 26, 2022), 87 FR 15496, 15624 (March 18, 2022) (File No. S7-02-22). The Commission’s economic analysis utilizes the Securities Industry and Financial Markets Association, Management & Professional Earnings in the Securities Industry—2013 Report for the hourly rates of various financial industry market professionals. To compensate for inflation, the data reflects the 2024 hourly rate level after adjusting for the annual cumulative wage inflation rate of 37% between 2013 and 2023, and another 4% between 2023 and 2024. See The Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries Private Industry (available at <https://fred.stlouisfed.org/series/ECIWAG>). The number of hours for each task is based on the MSRB’s internal estimate.

municipal securities activities and that would choose to conduct remote office inspections by entering the FINRA Pilot Program in connection with discharging their supervisory activities under MSRB Rule G-27(d), the MSRB estimates about \$3,120 annually per FINRA-member dealer for ongoing compliance costs.<sup>76</sup> These compliance costs include the incremental annual cost for FINRA-member dealers to conduct the required risk assessment, submit the required data points to FINRA on a quarterly basis, provide continuing education, and ensure that it is in compliance with the eligibility requirements.<sup>77</sup> Finally, the MSRB does not expect the proposed rule change would impose any cost on municipal entities or investors because FINRA-member dealers should realize cost savings resulting from greater operational efficiencies, which would offset the ongoing compliance costs related to complying with the FINRA Pilot Program.

#### Effect on Competition, Efficiency, and Capital Formation

The MSRB believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change is applicable to all eligible FINRA-member dealers and is not expected to significantly affect the protection of investors and

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<sup>76</sup> FINRA-member dealers of various sizes may incur different amounts of ongoing costs. Therefore, the \$3,120 annually per firm represents an estimate for a mid-sized firm (“mid-sized” is defined by FINRA as a firm with 151-499 registered representatives).

<sup>77</sup> The MSRB currently estimates annual ongoing cost of six hours total for a risk and eligibility requirement assessment, data submission to FINRA on a quarterly basis and continuing education requirements. The MSRB estimates an hourly rate of \$520 for a compliance attorney to complete an annual risk and eligibility requirement assessment in approximately three hours. Additionally, the MSRB estimates one hour to complete the data submission to FINRA by a compliance attorney. Finally, the MSRB estimates that any drafting of annual continuing education requirements would take approximately two hours for a compliance attorney to complete, summing to a total of \$3,120 annually per FINRA-member dealer for ongoing compliance costs (i.e., 3 hours + 1 hour + 2 hours = 6 hours) x hourly rate of \$520 = \$3,120.



issuers. While upfront costs would be relatively higher for smaller-size rather than larger-size FINRA-member dealers, the MSRB expects the total one-time upfront costs to be manageable for FINRA-member dealers that elect to participate in the FINRA Pilot Program. The MSRB believes it is appropriate, in an environment with increased remote working personnel, to provide certain eligible FINRA-member dealers with the option for remote office inspection subject to certain conditions during the requisite time period by entering the FINRA Pilot Program. Since bank dealers are not covered in the proposed rule change for now, to the extent that some of those 18 bank dealers, as of 2023, would have wanted to avail themselves of conducting office inspections remotely, had the option been available to them, such bank dealers may be disadvantaged in their competition with other dealers. The MSRB, however, believes this disadvantage would be minimal because the MSRB understands through its outreach and engagement with some bank dealers that bank dealers generally have fewer OMSJs and municipal branch offices or locations than other dealers, so the use of a remote inspections pilot program may not be coveted for most bank dealers when weighing the called for processes and documentation requirements. The MSRB believes that the proposed rule change would improve the municipal securities market's operational efficiency and promote regulatory consistency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or losses, but believes the benefits accumulated over time would outweigh the upfront costs of revising policies and procedures and the annual ongoing costs of ensuring compliance.

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

Written comments were not directly solicited on the proposed rule change.<sup>78</sup>

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>79</sup> and Rule 19b-4(f)(6)<sup>80</sup> thereunder. 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 Exchange 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 Exchange Act.

Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2024-05 on the subject line.

#### Paper Comments:

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<sup>78</sup> Comments received in response to FINRA's recently adopted FINRA Pilot Program under FINRA Rule 3110.18 can be found at <https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007.htm>.

<sup>79</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>80</sup> 17 CFR 240.19b-4(f)(6).

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

All submissions should refer to File Number SR-MSRB-2024-05. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2024-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.<sup>81</sup>

Sherry R. Haywood  
Assistant Secretary

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<sup>81</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5****Rule G-27: Supervision**

(a) - (g) No Change.

**Supplementary Material**

.01 - .03 No Change.

.04 Reserved.

**.05 Remote Inspections Pilot Program**

**(a) Scope.** This Supplementary Material establishes the standards by which a dealer may participate in the Remote Inspections Pilot Program of a registered securities association of which it is a member (“Pilot Program”) with respect to the required inspection of offices of municipal supervisory jurisdiction, municipal branch offices and non-branch locations by dealers pursuant to paragraphs (d)(i)(A), (B) and (C) of Rule G-27. This Supplementary Material shall cover the required inspections of such offices or locations for a period of three years starting on July 1, 2024 and expiring on June 30, 2027 (“Pilot Period”). If this Supplementary Material is not amended to allow dealers to continue to participate in the Pilot Program with respect to their municipal securities activities should a registered securities association extend the Pilot Period or make permanent the Pilot Program, this Supplementary Material will automatically sunset on June 30, 2027, after which dealers will not be able to participate in the Pilot Program with respect to their municipal securities activities.

**(b) Risk Assessment**

**(1) Review Standards.** Subject to the requirements of this Supplementary Material, each dealer obligated to conduct an inspection of an office or location during the Pilot Period pursuant to, as applicable, paragraphs (d)(i)(A), (B) or (C) of Rule G-27, may elect to conduct the applicable inspection remotely, without an on-site visit for an office or location, when a dealer reasonably determines that the purposes of this Supplementary Material can be accomplished by conducting such required inspection remotely. Prior to electing a remote inspection for an office or location, rather than an on-site inspection, a dealer must first develop a reasonable risk-based approach to using remote inspections, and conduct and document a risk assessment for that office or location. The assessment must document the factors considered, including, among other things, the dealer’s size, organizational structure, scope of business activities, number and location of the dealer’s offices, the nature and complexity of the products and services offered by the dealer, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of municipal securities representatives or associated persons, and any indicators of irregularities or misconduct (i.e., “red flags”), and must take into account any higher-risk activities that take place at, or higher-risk associated persons that are assigned to, that office or location. A dealer or its office or

location that is ineligible for remote inspections, pursuant to paragraph (c) of this Supplementary Material, must conduct an on-site inspection of that office or location on the applicable schedule under section (d) of Rule G-27. Notwithstanding this Supplementary Material, a dealer shall remain subject to the other requirements of section (d) of Rule G-27.

**(2) Other Risk Assessment Factors.** In conducting the risk assessment of each office or location in accordance with paragraph (b)(1) of this Supplementary Material, a dealer shall consider, among other things, the following factors in making its risk assessment for remotely inspecting an office or location:

- (A) the volume and nature of customer complaints;
- (B) the volume and nature of outside business activities, particularly investment-related;
- (C) the volume and complexity of products offered;
- (D) the nature of the customer base, including vulnerable adult investors;
- (E) whether associated persons are subject to heightened supervision;
- (F) failures by associated persons to comply with the dealer's written supervisory procedures; and
- (G) any recordkeeping violations.

In addition, dealers should conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk offices or locations, or where there are red flags, and supervisory systems must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.

### **(c) Eligibility Exclusions and Conditions**

#### **(1) Firm-Level Requirements**

- (A) With respect to firm-level requirements, a dealer shall not be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material if (i) the dealer is not a member of a registered securities association or (ii) at any time during the Pilot Period such dealer becomes ineligible to conduct remote inspections under the prescribed firm-level ineligibility criteria of such registered securities association.

(B) During the period that a dealer is participating in the Pilot Program, the dealer must satisfy the following conditions to be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material:

(i) Recordkeeping System.

(a) The dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's written supervisory procedures under Rule G-27(c);

(b) The records must not be physically or electronically maintained and preserved at the office or location subject to the remote inspection; and

(c) The dealer must have prompt access to any records made by an office or location participating in the Pilot Program.

(ii) Surveillance and Technology Tools. The dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each such remotely supervised office or location. The tools may include but are not limited to:

(a) firm-wide tools such as electronic recordkeeping systems, electronic surveillance of e-mail and correspondence, electronic trade blotters, regular activity-based sampling reviews and tools for visual inspections;

(b) tools specifically applied to such office or location based on the activities of associated persons, products offered, restrictions on the activity of the office or location (including holding out to customers and handling of customer funds or securities); and

(c) system security tools such as secure network connections and effective cybersecurity protocols.

**(2) Office or Location Requirements**

(A) With respect to office or location requirements, a dealer shall not be eligible to conduct remote inspections of any office or location in

accordance with this Supplementary Material if at any time during the Pilot Period such office or location becomes ineligible for remote inspection under the prescribed location-level eligibility criteria of a registered securities association of which it is a member.

(B) As part of the requirement to develop a reasonably designed risk-based approach to using remote inspections, and the requirement to conduct and document a risk assessment, during the period that a dealer is participating in the Pilot Program, a specific office or location of the dealer must satisfy the following conditions to be eligible for remote inspections in accordance with this Supplementary Material:

(i) electronic communications (e.g., e-mail) are made through the dealer's electronic system;

(ii) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with Rule G-27(e); and

(iii) no books or records of the dealer required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's own written supervisory procedures under Rule G-27(c) are physically or electronically maintained and preserved at such office or location.

**(d) Written Supervisory Procedures for Remote Inspections.** Consistent with a dealer's obligation under Rule G-27(c), a dealer that elects to participate in the Pilot Program must establish, maintain, and enforce written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, including applicable Board rules. Reasonably designed procedures for conducting remote inspections of offices or locations must address, among other things:

(1) the methodology, including technology, that may be used to conduct remote inspections;

(2) the factors considered in the risk assessment made for each applicable office or location pursuant to paragraph (b) of this Supplementary Material; and

(3) the use of other risk-based systems employed generally by the dealer to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, including applicable Board rules.

**(e) Effective Supervisory System.** The requirement to conduct inspections of offices and locations is one part of the dealer's overall obligation to have an effective supervisory system. Therefore, the dealer must maintain its ongoing review of the activities and functions occurring at all offices and locations, whether or not the dealer conducts inspections remotely. A dealer's use of remote inspection of an office or location will be subject to the same standards for review as for other offices or locations under Rule G-27 in addition to the standard set forth in this Supplementary Material. Where a dealer's remote inspection of an office or location identifies any red flags, the dealer 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.

**(f) Documentation Requirement.** A dealer must maintain and preserve a centralized record for each period constituting a Pilot Year, within the meaning of the Pilot Program and as defined by a registered securities association. The record must separately identify:

(1) all offices or locations that were inspected remotely; and

(2) any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring, as provided in paragraph (e) of this Supplementary Material. A dealer'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.

**(g) Data and Information Collection Requirement.** Dealers that elect to participate in the Pilot Program and are not excluded under any of the firm-level requirements under paragraph (c)(1) of this Supplementary Material must comply with the requirements of a registered securities association, of which they are a member, with respect to the collection and submission of specified data and information, and in the manner and format determined by the registered securities association.

Such dealers shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with any specified data and information collection, and transmission requirements prescribed by a registered securities association of which they are a member.

**(h) Election to Participate in Remote Inspections Pilot Program.** Dealers eligible for participation in the Pilot Program by not having been excluded under any of the firm-level requirements under paragraph (c)(1) of this Supplementary Material shall make their election, in the manner and format as prescribed by a registered securities association, of which they are a member, to participate in the Pilot Program in accordance with this Supplementary Material. Dealers that elect to withdraw from subsequent Pilot Years (i.e., Pilot Year 2, Pilot Year 3, and Pilot Year 4, if applicable) shall withdraw in the manner and format as prescribed by a registered securities association of which they are a member.



**(i) Failure to Satisfy Conditions.** A dealer that fails to satisfy the conditions of this Supplementary Material, including the requirements specified by a registered securities association of which it is a member, related to the timely collection and submission of data and information shall be ineligible to participate in the Pilot Program with respect to its municipal securities activities and must conduct on-site inspections of each office and location on the required cycle in accordance with Rule G-27(d).