



August 1, 2023

VIA ELECTRONIC DELIVERY

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: Financial Industry Regulatory Authority: Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, to Adopt Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision)/File No. SR-FINRA-2023-006**

Dear Ms. Countryman:

Virtu Financial, Inc. (“Virtu”)<sup>1</sup> respectfully submits this letter in response to the above-referenced rule filing submitted by the Financial Industry Regulatory Authority (“FINRA”) on July 5, 2023 (the “Proposal”).<sup>2</sup> The Proposal seeks to update the existing FINRA supervision rule to align it with the current business environment that was significantly and permanently altered by the COVID-19 pandemic resulting in many employees working from home or in a hybrid structure instead of physically reporting to their firm’s business office location each and every day. Specifically, the Proposal would allow firms to treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location.

Virtu commends FINRA for seeking to modernize the supervision rule. However, we believe that FINRA is taking a one-size-fits-all approach to the definitions of a “branch office” and “office of supervisory jurisdiction” that would force all members into a paradigm that may make sense for a retail broker-dealer with thousands of registered representatives working from their homes and meeting clients at their homes, but makes no sense for a firm like Virtu.

---

<sup>1</sup> Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

<sup>2</sup> SEC Release No. 34-97839; File No. SR-FINRA-2023-006 (July 5, 2023), available at <https://www.sec.gov/rules/sro/finra/2023/34-97839.pdf>.

As we explained in a comment letter responsive to an earlier version of the Proposal,<sup>3</sup> FINRA’s existing definitions of “branch office”<sup>4</sup> and “office of supervisory jurisdiction”<sup>5</sup> were adopted in an era where most business activities were conducted in physical office locations incapable of centralized, remote supervision and fail to account for the electronic age that now governs our business world. Today, the vast majority of activities covered by these definitions – from new account onboarding to investment banking, from market making to order execution, among other activities – can all be handled electronically and can be remotely and centrally supervised. The physical location of the associated person engaging in these activities should not make a difference when those activities are accomplished electronically through centralized systems that can be supervised from anywhere.

Accordingly, we believe the Proposal should be amended to codify that all personal residences where only electronic activities are carried out, whether those be supervisory or other securities-related activities, are non-branch locations and reconsider the need to conduct any physical inspections of an associated person’s residence and instead rely on technological monitoring tools and electronic recordkeeping. At Virtu, our systems and records are for the most part electronic and centralized. Any paper gets delivered to an office that is already designated as a branch office. We have no natural persons as clients and none of our employees meets with clients at their homes. The fact that we allow personnel to work from home for convenience should not transform their home into a branch office or office of supervisory jurisdiction.

Candidly, we struggle to understand what we would examine if we were required to do an inspection of an employee’s home office. What would the firm’s branch office examiners be looking for during such an inspection? What would be the purpose of the visit? If a firm’s branch office examiners needed to speak with an associated person, they could do so via phone, video conference (or similar technology) or request that the associated person report to the firm’s office for an interview. Our understanding is that, today, FINRA examiners can and do perform many of their examination activities remotely using a variety of technological tools that have been developed for that purpose – why shouldn’t member firms also be allowed to take advantage of similar tools in supervising their employees?

---

<sup>3</sup> See Letter from Thomas M. Merritt, Virtu Deputy General Counsel, to Vanessa Countryman (Aug. 23, 2022), available at <https://virtu-www.s3.amazonaws.com/uploads/documents/Virtu-Financial-Adopt-Residential-Supervisory-Location-Comment-Letter-08232022.pdf>, which Virtu hereby incorporates by reference.

<sup>4</sup> FINRA Rule 3110(f)(2)(A): A “branch office” is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such. . . .”

<sup>5</sup> FINRA Rule 3110(f)(1): “Office of Supervisory Jurisdiction” means any office of a member at which any one or more of the following functions take place: (A) order execution or market making; (B) structuring of public offerings or private placements; (C) maintaining custody of customers’ funds or securities; (D) final acceptance (approval) of new accounts on behalf of the member; (E) review and endorsement of customer orders, pursuant to paragraph (b)(2) above; (F) final approval of retail communications for use by persons associated with the member, pursuant to [Rule 2210\(b\)\(1\)](#), except for an office that solely conducts final approval of research reports; or (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

Of course, we recognize that where an office is held out to the public as being available for conducting business in person, where checks or other monetary instruments are accepted for deposit, where securities certificates are accepted for deposit, and other similar activities occur, the location would need to be registered as a “branch office” subject to physical inspection requirements. But when the location is not held out to the public as a physical office location, no physical records are maintained, all activities occur through centralized electronic systems, and supervision may be conducted remotely, there should be no reason to consider the location as being a “branch office” nor should there be any reason to inspect the physical location. Such locations should qualify as non-branch locations for which members only need to keep an address on file but should have no obligation to register or inspect.

\* \* \*

Virtu firmly believes that advances in technology and changes in how employees interact in the workplace justify modernizing the supervisory framework to move away permanently from requiring physical inspections of residential supervisory locations. Given the array of technologies available to facilitate firms’ remote supervision of their employees, we believe there is no longer a need or justification for requiring physical inspections of residential supervisory locations and urge the SEC and FINRA to reconsider this element of the supervision rule.

Respectfully submitted,



Thomas M. Merritt  
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Mark T. Uyeda, Commissioner  
The Honorable Jaime E. Lizarraga, Commissioner  
Dr. Haoxiang Zhu, Director, Division of Trading and Markets  
Robert Cook, Chief Executive Officer, FINRA