



► July 10, 2017

Jennifer Piorko Mitchell
FINRA Office of the Corporate Secretary 1735 K
Street, NW
Washington, DC 20006

Lisa Roth
630 First Avenue
San Diego, CA 92101
619-283-3500

Re: Regulatory Notice 17-20: FINRA Requests Comment on the Effectiveness and Efficiency of Its Rules on Outside Business Activities and Private Securities Transactions

Dear Ms. Mitchell:

I appreciate the opportunity to comment on the retrospective review of the OBA and PST rules. I believe the industry and investing public will benefit greatly from this fresh look.

The distinction between an OBA and PST is at times subtle even to a trained industry professional, let alone to an investor. The relevant guidance is now quite aged, and does not account for current trends in the markets including the means through which financial services are delivered, and tools available to monitor the activity.

I believe the efforts to distinguish between OBAs and PSTs as currently described in regulatory guidance allows for gaps in oversight, and as such, in investor protection. It is my opinion that replacing the existing rules with a new rule framework could mitigate the gaps.

I suggest that FINRA consider 1) restoring private securities transactions to what I believe was the original definition (a private investment by a RR) and 2) establish two categories of OBA's: investment-related and non-investment related. For each, guidance might address the finer points such as whether the activity is active versus passive; regulated or unregulated; compensated or uncompensated; and so on. A rule framework supported by guidance along these lines would be aligned with the challenges firms face in their day-to-day approvals and oversight of RR outside activities.

In this context, FINRA should also consider changes to the Form U-4 that would provide for uniform disclosure of outside activities rather than the current form of disclosure, which is in an open-ended text box and/or under 'employment.' The uniformity would, in my opinion, be a benefit to investors who visit BrokerCheck for purposes of vetting investment professionals.

The level of oversight required by prevailing guidance of PST/investment-related OBAs is high. For example, pursuant to Notice to Members 96-33, a BD that approves an RR's independent Investment Adviser must record "the transaction" on its books and records, and must "supervise the associated person's participation as if the transaction were executed on behalf of [the firm]." Since an investment adviser is a separately regulated entity, this level of oversight is above and beyond what the BD should have to undertake. In my opinion, evidence of the IA's good standing should be appropriate and adequate for monitoring outside investment advisory business.

I encourage FINRA to engage other regulators including the states and the SEC in the dialogue regarding regulated outside activities with a goal of establishing uniform disclosure requirements on Form U-4, clarifying responsibilities of BDs across jurisdictional lines, and to ensure that any perceived gaps in oversight are addressed from the top down.

Thank you for this opportunity to comment.

Best regards,

Lisa Roth
President