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April 27, 2018

By Electronic Mail to pubcom@finra.org.

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 18-08:
Advisor Group Inc. Comments on the Proposal to Create New FINRA
Rule 3290 to Streamline Requirements Regarding the Outside Business
Activities of Registered Persons**

Dear Ms. Mitchell:

Advisor Group appreciates the opportunity to respond to the request for comments issued by the Financial Industry Regulatory Authority (“FINRA”) in Regulatory Notice 18-08 (“RN 18-08”) regarding a proposal to consolidate FINRA Rule 3270 (Outside Business Activities) and FINRA Rule 3280 (Private Securities Transactions) into new FINRA Rule 3290 (Proposed Rule 3290”). Advisor Group generally supports FINRA’s efforts to consolidate and simplify these rules into a single rule governing the approval and supervision of outside business activities. However, we respectfully submit that in light of recent regulatory developments the proposal is premature and that there is insufficient information to adequately comment on FINRA’s Proposed Rule.

The Securities and Exchange Commission has just proposed Regulation Best Interest. Regulation Best Interest proposes a new standard of conduct as well as certain disclosures which would apply to broker-dealers and registered representatives. Regulation Best Interest also provides for updated standards of conduct for investment advisers and their associated persons. Proposed Rule Best Interest is likely to go through several iterations following the comment period which ends in mid-July 2018. Until proposed Regulation Best Interest is finalized it is unclear what supervisory obligations the new rule will impose.

With respect to a registered representative who acts as a non-affiliated registered investment adviser (“Independent RIA” or “IRIA”), Proposed Rule 3290 relaxes the supervisory obligations currently owed by broker-dealer under FINRA Rule 3280. Proposed Rule 3290 requires that a registered representative provide prior written notice of the proposed IRIA, and that the broker-dealer do a risk assessment of the proposed activity. If the activity is approved, Proposed Rule 3290 would not impose a

supervisory obligation over the IRIA activity and would not require the broker-dealer to record on its books and records transactions resulting that activity.

When a registered person is associated with a broker-dealer, but is an associated person of an unaffiliated investment adviser, this is often referred to as a “Hybrid” model. This hybrid model presents unique supervision challenges as a result of two regulated entities each having some supervisory responsibility for the same registered person. These challenges may be further complicated by the SEC’s new proposed standard of conduct for investment professionals.

Regulation Best Interest provides that a registered person must act is a customer’s “best interest.” There is a new disclosure requirement, Form CRS, as well as an obligation of “care” associated with the best interest analysis. There is also a requirement that member firms have procedures reasonably designed to mitigate or eliminate conflicts of interest. Regulation Best Interest also proposes an updated standard of conduct for investment advisers as well as full and fair disclosure of conflicts and even obtaining an investor’s informed consent to certain conflicts. All of these present significant and material changes to the way member firms may conduct business and supervise the activity of registered persons. All of these must be evaluated by each member firm to determine how they would be implemented if adopted.

Regulation Best Interest presents significant challenges in determining the potential risks to investors if some outside business activities are not supervised. This difficulty is pronounced in a Hybrid model. For example, there are three Form CRS disclosure mock-ups in the release; (1) Broker-Dealer, (2) Investment Adviser and (3) Dual-Registrant. None of these mock-ups appear to contemplate a Hybrid model and it is unclear from the proposal if this situation was contemplated. As a result, there are certain questions in a Hybrid model that are left un-answered in the Regulation Best Interest proposal such as what entity will provide the Form CRS and what content will be required? There are numerous other questions that make it difficult to evaluate how Regulation Best Interest would be implemented in context of Proposed Rule 3290.

Without fully understanding the actual requirements of Regulation Best Interest, we are not in a position to adequately asses or comment on Proposed Rule 3290. Specifically, without understanding our obligations under Regulation Best Interest it is unclear whether the lack of supervision of certain outside business activities may present increased risk to investors. As a result, we would request that FINRA defer Proposed Rule 3290 until such time that the requirements of Regulation Best Interest are finalized.

Sincerely,



G. Stephen Wastek
Associate General Counsel