

Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of Its Rules on Outside Business Activities and Private Securities Transactions

Comment Period Expires: June 29, 2017

Executive Summary

FINRA is conducting a retrospective review of the rules governing outside business activities and private securities transactions to assess their effectiveness and efficiency. This *Notice* outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with these specific rules.

Questions regarding this *Notice* should be directed to:

- ▶ Philip Shaikun, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451;
- ▶ James S. Wrona, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8270;
- ▶ Meredith Cordisco, Associate General Counsel, Office of General Counsel, at (202) 728-8018; or
- ▶ Lori Walsh, Deputy Chief Economist, Office of the Chief Economist, at (202) 728-8323.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by June 29, 2017.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or

May 2017

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Systems

Key Topics

- ▶ Outside Business Activities
- ▶ Private Securities Transactions

Referenced Rules & Notices

- ▶ FINRA Rule 3270
- ▶ FINRA Rule 3280

- ▶ Mailing comments in hard copy to:
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Background & Discussion

FINRA believes that it is appropriate, after a reasonable period of time, to look back at its significant rulemaking to determine whether a FINRA rule or rule set² is meeting its intended investor-protection objectives by reasonably efficient means. FINRA further believes that a retrospective review should include a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. FINRA intends to select relevant rules and to conduct retrospective rule reviews on an ongoing basis to ensure that its rules remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry and market changes.

In conducting the review, FINRA staff will follow a similar process to previous retrospective rule reviews. In general, the review process consists of an assessment and action phase. During the assessment phase, FINRA will evaluate the efficacy and efficiency of the rule or rule set as currently implemented, including FINRA's internal administrative processes. FINRA will seek input from affected parties and experts, including its advisory committees, subject-matter experts inside and outside of the organization, and other stakeholders, including industry members, investors, interested groups and the public. FINRA staff will assess issues including the existence of duplicative, inconsistent or ineffective regulatory obligations; whether market or other conditions have changed to suggest there are ways to improve the efficiency or effectiveness of a regulatory obligation without loss of investor protections; and potential gaps in the regulatory framework. Upon completion of this assessment, FINRA staff will consider appropriate next steps, which may include some or all of the following: modifications to the rule or rule set, updated or additional guidance, administrative changes or technology improvements, or additional research or information gathering.

The action phase will then follow. If the assessment recommends modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the SEC, or both.

Request for Comment

FINRA has identified Rules 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person) for review. The rules govern firm employees' business and securities activities carried out away from their firm — activities that are outside the regular course or scope of their employment with the firm. The ability of firm personnel to engage in such activities may benefit some investors, depending on the circumstances, but may also pose risks, including to both investors and the firm. The rules seek to protect the investing public from potentially problematic or risky activities that are unknown to the firm but could be perceived by the investing public as either part of the firm's business or having the firm's imprimatur. The rules seek to protect the firm from the concomitant reputational and litigation risks. In keeping with these purposes, the rules provide a regulatory framework for firms to be informed of such activities, implement a system to assess them, determine whether to limit or place conditions on the employee's participation in them and, in the case of private securities transactions for compensation, record and supervise the transactions.

FINRA seeks answers to the following questions with respect to these rules:

1. Have the rules effectively addressed the problem(s) they were intended to mitigate? To what extent have the original purposes of and need for the rules been affected by subsequent changes to the markets, the delivery of financial services, the applicable regulatory framework, or other considerations? Are there alternative ways to achieve the goals of the rules that should be considered?
2. What have been experiences with implementation of the rule set, including any ambiguities in the rules or challenges to comply with them?
3. What have been the economic impacts, including costs and benefits, arising from FINRA's rules? Have the economic impacts been in line with expectations described in the rulemaking? To what extent would these economic impacts differ by business attributes, such as size of the firm or differences in business models?
4. Can FINRA make the rules, interpretations or attendant administrative processes more efficient and effective?

In addition to comments responsive to these questions, FINRA invites comment on any other aspects of the rules that commenters wish to address. FINRA further requests any data or evidence in support of comments. While the purpose of this *Notice* is to obtain input as to whether or not the current rules are effective and efficient, FINRA also welcomes specific suggestions as to how the rules should be changed. As discussed above, FINRA will separately consider during the action phase specific changes to the rules.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.