ARM Association Of Registration Management, Inc. Why Go It Alone?

May 29, 2025

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 25-05 – FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities

Dear Ms. Mitchell,

The Association of Registration Management, Inc. ("ARM") appreciates the opportunity to comment on Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 25-05 ("Notice 25-05"), which proposes consolidating Rules 3270 and 3280 (the "Current Rules") into a single rule (proposed Rule 3290, the "Proposed Rule"), with a view towards streamlining the requirements regarding associated persons' outside business activities ("OBA" or "OBAs").

I. SUPPORT FOR STREAMLINING OUTSIDE BUSINESS ACTIVITY RULES

We commend FINRA's initiative to make the Current Rules more efficient. Once implemented, FINRA's targeted approach will allow firms to allocate compliance resources more effectively, concentrating on activities that present higher risks to investors and market integrity without adding risk or undisclosed conflicts of interest.

Since the Current Rules were last amended, there have been significant developments in the industry, and we believe that the rules should be amended to better reflect this new environment. Three trends that have affected compliance with the rules are:

1. The significant broadening and deepening of other financial regulatory architecture – in particular, that for individuals licensed or registered as investment advisers with the SEC and/or the states;
2. The ubiquitousness of automation and computerization, which allows for extensive

monitoring of all trading activity, recommendations, and electronic communications. Automation and computerization throughout the financial industry has made it so that virtually all professional activities are monitored in or near real time, with a comprehensive audit trail; and

3. The increasing complexity and interconnectedness of the financial system, creating an ecosystem where individuals work for and interact with many firms.

We believe that the purpose of the Current Rules is to give firms, and in some cases the public, transparency regarding activities of registered persons that would reasonably be expected to create conflicts of interest that may affect the registered activities of the individual, investor choice and the integrity of the securities markets. Our recommendations are made with the intent of preserving these goals.

We believe that this is an opportunity for FINRA to very significantly streamline the rules related to OBAs to better recognize and adjust to these noted developments while maintaining investor protection and a focus on conflicts of interest.

1.1 General Comments

First, ARM suggests that the Proposed Rule should only apply to registered representatives and registered principals who are client-facing. We believe that the goals of the rules are not furthered by requiring unregistered associated persons or those who are not client-facing to report their outside business activities, because the OBAs of those individuals do not create conflicts of interest with the investing public, and because conflicts of interest that arise in connection with non-client facing personnel are efficiently and effectively monitored by member firms in accordance with existing supervisory control rules.

The Proposed Rule also includes a complex decision tree for determining reporting obligations. We believe that simplifying this framework by focusing on the OBAs of registered representatives who deal directly with the public would enhance clarity and reduce administrative burdens. Our suggestions would streamline the decision-making process for determining reporting obligations.

II. STREAMLINING THE MANAGEMENT OF INVESTMENT ADVISORY ACTIVITIES, REGULATED ACTIVITIES AND ACTIVITIES ON BEHALF OF AN AFFILIATE

Investment Advisers have become subject to many new regulations since the Current Rules were last amended. These regulations include the requirement that all investment advisers maintain a comprehensive Code of Conduct; written supervisory procedures that are reasonably designed to achieve compliance with Investment Advisers Act provisions (and associated regulations), including provisions relating to sales practices, advisers' fiduciary, duties, and supervision of conflicts of interest of investment adviser associated persons, and significant disclosure obligations found throughout the Investment Advisers Act. Conflicts of interest that may arise for an investment adviser are also mitigated by the increased regulation of broker-dealer personnel and investment advisor associated persons. The same can be said for insurance brokers, real estate brokers and associated persons registered with CFTC-regulated entities. All of these individuals are subject to extensive conflict of interest and disclosure regulation with respect to these activities, and we believe that any conflicts of interest that may arise are sufficiently mitigated by current FINRA and other regulations. Similarly, we believe that the Current Rules exclude OBAs undertaken in the context of an individual's employment (e.g., for an affiliated entity), and we concur with the Proposed Rule's provisions to continue this treatment. We believe that the Proposed Rule would be unwieldy if it treated such activities as OBAs.

Furthermore, we believe that associated persons engaged in investment advisory activities through unaffiliated firms should be exempt from broker-dealer OBA requirements with respect to such regulated activities. If an individual is an Investment Adviser Associated Person of an Investment Adviser registered with the SEC or any state, and that same individual is separately registered with a member firm, the individual's investment advisory activities should be excluded from the definition of "outside business activity", because the individual's role as an

investment advisor is separately, and, as noted, sufficiently and specifically regulated. In many cases, these activities are also highly synchronized. In the spirit of efficiency, without compromising effectiveness, we believe that the above-described scenario should be removed from the definition of "outside business activity".

2.1 Private Securities Transactions

The Proposed Rule recognizes that outside securities transactions among immediate family members, for which there is no selling compensation, are excluded. We believe that this exclusion should cover members of the same family, as that term is defined for purposes of the family office exclusion in the Investment Advisers Act, and members whose investment activities are housed within the same family office (is that term is defined for purposes of the Investment Advisers Act). Further, we believe that non-dependent children, in any case, should be excluded.

2.2 Special Concerns around Privacy

We have specific privacy-related concerns about the proposed requirement for broker-dealer supervision of certain investment advisory activities, especially when the associated person is affiliated with an unaffiliated investment advisory firm. Such supervision may necessitate the sharing of non-public personal information of advisory clients with the broker-dealer, potentially violating client confidentiality and privacy rights under federal and state laws. While such sharing could be made legal, for example, through consent, we believe such disclosure raises risk and is unnecessary, given the various regulatory schema involved. While this risk is particularly prominent with respect to investment advisory activities, it is not limited to these and can arise in various other contexts as well.

2.3 Disclosure of OBAs for Registered Representants who are not client-facing

ARM suggests that not all OBAs should be publicly disclosed. Instead, Form U4 should only disclose OBAs for registered representatives and registered persons who are client-facing. Just as we recommend above that the proposed rule should not apply to associated persons of member firms who are not themselves customer facing, we believe that it is not relevant to disclose OBAs for people who are not customer-facing, as their professional activities are already sufficiently monitored and regulated, and the public disclosure of OBAs for persons who do not directly interact with customers serves no investor protection or conflict mitigation purpose. Additionally, we believe that certain OBAs are irrelevant for disclosure purposes even for those that are client-facing, including but not limited to non-investment related second jobs (i.e. Uber, retail and seasonal work), OBAs that are directorships or charitable or religious organizations. Directorships for these organizations are personal in nature and should not have to be disclosed, unless the organization, or the specific director's role, is investment-related or financial in nature.

2.4 *Narrow the Scope to a Customer of the Associated or Registered person*

In the proposed rule, FINRA proposes a 'minor addition' that the member must consider whether the activity or transaction involves the member's customer(s), on the basis that firms engage in a similar analysis today. This proposed obligation would be difficult to fulfill, in part because there may not be a simple way of identifying whether a customer of the firm is involved, unless an activity or transaction involves a registered person's or an associated person's own customer. Likewise, a firm's compliance or supervision teams evaluating said outside activity or transaction will have no way of independently verifying whether any of the parties include a customer of the

firm.

2.5 Clarify which real estate activities are within scope

The definition of "investment-related activity" in the proposed rule includes "real estate;"
however, it is not defined. As a practical matter, not all real estate businesses require a significant commitment of time from the owner, and many do not generate conflicts of interest with the business of the associated person or the member firm. For example, while a person who rents out their vacation home for one week during the summer may operate a real estate business, there is no reasonable risk of a conflict of interest arising from this activity. We respectfully request that FINRA to clarify through additional examples of which real estate activities FINRA considers to be investment-related

2.6 *Clarify that certain board-related activities are out of scope*

We suggest that FINRA clarify, perhaps by FAQ, that a registered person serving on the board of a nonprofit, not receiving compensation, and advising on investment strategies in a personal capacity should not be considered an outside activity subject to Rule 3290's requirements. We believe that a registered person serving on the board of a nonprofit and not receiving compensation has no conflicts of interest with his or her firm duties and that such activity should not be considered an outside business activity.

3 HARMNOIZATION OF RELEVANT REGULATION, FORM U4 AND APPLICABLE SYSTEMS

We strongly recommend that FINRA consider amending the reporting requirement under Item 13 of Form U4 and the investment-related definition of Form U4 so they are consistent with the Proposed Rule in order to increase efficiency and decrease compliance burdens.
Member firms face significant issues filling the various forms completely and truthfully due to a lack of harmonization between the online forms, the FINRA Gateway, and the various state systems. Navigating these systems concurrently provides another significant issue for member firms, and we believe that harmonizing these systems will increase accuracy and efficiency in submitting the forms.
To address these concerns, we recommend aligning Form U4 and FINRA Gateway, as well as modernizing the FINRA Gateway. We strongly believe that technological advances, the implementation of new technology, and harmonization of existing systems should be a central focus of rule changes.

Another key aspect of harmonization that needs to be addressed is to carefully determine which parts of the online forms are mandatory, which are not mandatory, and which are "free text". In many cases, one of the most difficult challenges faced by the firms is determining how to respond to the form when a required field is inapplicable to the business in question, or where this is no opportunity to explain the firm's answer to a required field.

We also believe that FINRA should work with NASAA to ensure greater harmonization between the various state systems and FINRA systems [, such that a filing with one is a filing with all. This change alone would significantly increase the efficiency of the submission process. Members of ARM would be glad to make themselves available to FINRA staff to demonstrate the issues that firms face due to this lack of harmonization. We would be glad walk through these issues virtually or in-person to show specific examples of this.

3.1 Effect of Rule Proposals on Online Systems

Just as every rule proposal should properly identify the direct and indirect costs of the proposal to affected firms, so too should every proposal be accompanied by a statement by FINRA of how online forms and systems are impacted by such rule proposal, and we believe that the Proposed Rule is an opportunity for FINRA to do so.

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ARM appreciates the opportunity to offer this feedback and FINRA's consideration of our views. Please contact me if you wish to discuss our comments in more detail, if you have any questions, or if I can assist with this initiative any further.

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Sincerely,

Roseann Viscardi

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President
Association of Registration Management, Inc.
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On behalf of the Executive Board and members of the Association of Registration Management, Inc.

cc: Russell Sacks, King & Spalding LLP