BROADSTONE SECURITIES

Member FINRA/SIPC

May 5, 2025

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006

Re: Comment on Regulatory Notice 25-05 and Proposed Rule 3290

Dear Ms. Piorko Mitchell,

Broadstone Securities, Inc., appreciates the opportunity to comment on the recently published Regulatory Notice 25-05 ("Notice 25-05" or "25-05").

Notice 25-05 states that the purpose of issuing this notice is to streamline and reduce unnecessary burdens regarding the existing requirements. However, should proposed Rule 3290 be promulgated, it would do nothing to streamline FINRA Rules 3270 and 3280. For the reasons set forth below, the proposed rule would instead significantly expand member firms' compliance requirements for supervising a newly created class of "outside investment-related activity," raise numerous compliance and regulatory questions and increase burdens on member firms.

First, the proposed Rule includes, in its definition of "investment-related activity," securities, fee-based advice, crypto assets, commodities, derivatives, currency, banking, real estate, and insurance. This broadly expanded class of activities encompassed in the proposed rule includes investments that are, by any measure, rule, or guidance, not securities.

Second, requiring a member firm to approve and supervise non-securities-related activities would impose additional compliance burdens on the firm and raise questions currently unaddressed in Notice 25-05.

For example, how would member firm obtain access to the information necessary to approve and supervise the trading activity of its registered representatives'

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customers for cryptocurrency trading (which occurs through a crypto exchange or a crypto broker using Blockchain)?

Also, for commodities transactions, would a FINRA member firm be required to be registered with the National Futures Association and employ a person with a FINRA Series 3 license to conduct the supervision of those activities conducted away from the member broker-dealer? Would a member firm be required to submit a 1017 application to add this as a line of business?

Also, what specific types of banking and real estate transactions would be subject to the proposed Rule and how would supervision work? How would a broker-dealer obtain internal information from a bank necessary to conduct meaningful supervision? What is the rationale for requiring supervision of outside activities at a bank, given that banking is already a heavily regulated industry?

Also, what is the rationale for requiring oversight of non-securities-related insurance products, such as term life, whole life, and disability insurance? Many associated persons conduct insurance business away from their FINRA member firms through an insurance agency, carrier, or insurance marketing organization. Traditionally, this activity has always been considered an "outside business activity" under FINRA Rule 3270, which requires only notice and prior approval for the associated person to participate and does not require member firm supervision.

Third, the proposed Rule 3290 does nothing to resolve the currently existing confusion, referenced in FINRA Regulatory Notice 18-08 (page 8), related to the application of FINRA Rule 3280 and its related guidance, to an associated person's activities at an unaffiliated RIA firm. Notice 2025-05 states that the guidance issued in the 1990's would remain in effect under the proposed Rule 3290. However, this guidance appears to be in conflict with the express language in the proposed Rule 3290.

As noted in footnote 7 of Regulatory Notice 25-05, the current obligation outlined in "Notice to Members 96-33 (May 1996). "The Board of Governors...has interpreted [then Rule 40, now Rule 3280] to require prior notice of the investment advisory services that will be provided by the RR/IA for an asset-based or performance-based fee, rather than prior notice of each trade effected by an RR/IA for a particular customer." (Emphasis added).

However, the text of the proposed Rule 3290 does not provide that a single notice of the activity will suffice for investment advisory services. The proposed language of Rule 3290 clearly states that when an associated person participates in any of the defined "outside investment-related" activities for selling compensation, the

associated person would have to provide prior notice and obtain prior approval for each transaction.

As currently written, proposed Rule 3290 will cause significant delays in the timing of transactions and increase costs for advisory clients of unaffiliated RIA firms. Pre-approval of transactions would also impose additional costs on affected Member firms as well, as compliance with the proposed Rule would require them to hire more compliance and supervisory staff members and invest in technology platforms in order to perform these required reviews.

Finally, the proposed Rule is likely to increase member firms' reputational and litigation risks. Contrary to FINRA's stated intention, the current Rule 3280, and its guidance often subjects FINRA member firms to litigation arising out of claims entirely unrelated to their business, by litigants utterly unknown to them. Rule 3290, as proposed, will exacerbate this problem, creating additional non-legal private causes of action that litigants will use against FINRA member firms to assert claims that are totally unrelated to the business of the FINRA firms and to securities generally. More often than not, these litigants are likely to employ the FINRA arbitration process for this purpose, using its broad catch-all definition of "customer" ("not a broker or dealer") to facilitate their easy and inexpensive entry into the forum.

For all of the reasons above, I strongly urge FINRA not to adopt the proposed Rule 3290.

In conclusion, and in response to FINRA's request for alternative approaches, I submit the following.

As noted above, FINRA Regulatory Notice 18-08 recognized that the existing approach to the investment advisory activities of FINRA member associated persons, "under Rule 3280 and related guidance," has "...caused significant confusion and practical challenges." The proposals set forth in Notice 25-05 do nothing to alleviate these concerns.

However, Regulatory Notice 18-08 proposed sensible solutions to these concerns that merit reconsideration. Specifically, 18-08 proposed that for "investment-related activities" the member firm would need to conduct a risk assessment, and further proposed that if the member firm approved the activity it would not be required to supervise the underlying activities, unless the member firm (1) imposed conditions or limitations on the associated

person's participation in the activity or (2) such activity would require registration as a broker or dealer (such as a true private security transaction).

We believe that promulgation of Rule 3290, as initially proposed in Notice 18-08, would ultimately achieve the goal previously articulated by FINRA in Notice 18-08, to "reduce unnecessary burdens while strengthening investor protections related to outside activities."

We respectfully request that FINRA reject the currently proposed Rule 3290 and in its place promulgate Rule 3290 as initially drafted in FINRA Regulatory Notice 18-08.

Thank you for your consideration.

Sincerely,

Katherine M. Flouton
CEO