

May 13, 2025

Via FINRA Website

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

**Re: FINRA 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:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the "Committee"),¹ in response to FINRA Regulatory Notice 25-05, *FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on March 14, 2025.² The Notice solicits comment on a proposed new rule that would replace current FINRA Rules 3270 (Outside Business Activities of Registered Persons) and Rule 3280 (Private Securities Transactions of an Associated Person) with a single rule – Rule 3290 (Outside Activities Requirements) (the "Proposed Rule").

BACKGROUND

Current FINRA Rules 3270 and 3280 require registered representatives to notify their firms of proposed outside business activities ("OBA(s)"), and associated persons to notify their firms of proposed private securities transactions ("PST(s)"), respectively, so firms can determine whether to limit or allow those activities to proceed. The notifications required in these rules assist firms in identifying and determining how to mitigate potential risks posed by OBAs and PSTs, including by placing conditions on, or prohibiting, participation in the proposed OBA or PST.

¹ The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 33 member companies represent approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over four decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee's website at www.annuity-insurers.org/about-the-committee/.

² FINRA Regulatory Notice 25-05, *FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities* (March 14, 2025), available [here](#).

FINRA has long recognized the need to simplify and streamline the requirements imposed by Rules 3270 and 3280. In May 2017, FINRA issued Regulatory Notice 17-20, which launched a retrospective review of its OBA and PST rules to assess their effectiveness and efficiency.³ FINRA's review revealed that the current rules could benefit from revisions. As a result, FINRA issued Regulatory Notice 18-08, which solicited comment on a single streamlined rule (also referred to as Rule 3290) to address OBAs and PSTs (the "2018 Proposal").⁴ The Committee submitted a comment letter in response to RN 18-08 that generally supported the direction of the 2018 Proposal but asked FINRA to align the outside activity reporting requirements with Form U4 and exclude from reporting certain low-risk outside activities.⁵

The Proposed Rule, similar to the 2018 Proposal, again seeks to streamline Rules 3270 and 3280 into a single rule. The Committee again supports the direction of the Proposed Rule, but notes that, for the most part, its comments in response to the 2018 Proposal were not addressed. As a result, many of the reporting burdens that the Proposed Rule attempts to ease will remain in place if it is adopted as proposed. Just two days before issuing the Notice, FINRA launched its rule modernization initiative, with the goal of reviewing FINRA Rules in the context of "further[ing] FINRA's mission of investor protection and market integrity by supporting *more efficient and effective regulatory requirements*..." (emphasis added).⁶ FINRA's focus on *efficiency* is repeated in the Notice, with FINRA noting that the Proposed Rule is intended to "*enhance efficiency* without compromising protections for investors..." (emphasis added).⁷

The Committee's comments are focused on enhancing efficiency, reducing unnecessary regulatory burdens, and ensuring the continued protection of firms and investors.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the Proposed Rule and is generally supportive of the proposed changes. The Committee specifically supports FINRA's decision to narrow the reporting requirement under the Proposed Rule to those activities that are "investment-related," which the Committee believes will allow firms to focus on those outside activities that are most likely to raise investor protection concerns. The Committee's comments are focused, in part, on areas where greater efficiency could be achieved through: (1) aligning the outside activity reporting requirement in Item 13 of Form U4 with the Proposed Rule; (2) providing additional exclusions from the Proposed Rule for certain low-risk activities; and (3) providing additional guidance around the exclusion from reporting income related to certain rental properties.

1. FINRA Should Undertake a Rulemaking Initiative to Align Form U4 with the Proposed Rule

Currently, registered representatives are required to report outside business activities on their Form U4 and to update that information promptly. More specifically, Item 13 of Form U4 requires a registered representative to report whether they are "currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent, or otherwise," excluding "non-investment related activity that is exclusively charitable, civic, religious or fraternal

³ FINRA Regulatory Notice 17-20, FINRA Requests Comment on the Effectiveness and Efficiency of its Rules on Outside Business Activities and Private Securities Transactions (May 15, 2017), available [here](#).

⁴ FINRA Regulatory Notice 18-08, FINRA Requests Comment on Proposed New Rule Governing Outside Business Activities and Private Securities Transactions (February 26, 2018) ("RN 18-08"), available [here](#).

⁵ The Committee's comment letter in response to Regulatory Notice 18-08 is available [here](#).

⁶ FINRA Regulatory Notice 25-04, FINRA Launches Broad Review to Modernize Rules Regarding Member Firms and Associated Persons (March 12, 2025), available [here](#) ("RN 25-04").

⁷ See the Notice at pg. 1.

and is recognized as tax exempt.”⁸ While the outside activity reporting requirement in Item 13 of Form U4 does not perfectly align with current Rules 3270 and 3280, in the ordinary course, the reporting requirements align closely enough where, in most cases, an outside activity that is reportable under current Rules 3270 and 3280 is reportable under Item 13 of Form U4.

The Proposed Rule would narrow the outside business activity reporting requirement to those activities that are “investment-related.” The Committee supports this change but notes that registered representatives will still be required to report non-investment-related activities in response to Item 13 of Form U4, which lacks a carve out for non-investment related activities that matches the carve out under the Proposed Rule. Unless FINRA engages in rulemaking to align Form U4 reporting with the Proposed Rule, FINRA’s goal of “decreas[ing] burdens on members by eliminating the reporting and assessment of low-risk activities” will not succeed.⁹ Firms will still be required to collect information about non-investment-related, low-risk activities and, in fact, may experience increased compliance burdens as a result of being required to evaluate those activities when they are reported to ensure that they are not “investment-related” and subject to the Proposed Rule.

The Committee further notes that the definition of “investment-related” in the Proposed Rule differs from the definition in Form U4 in that it includes references to “crypto assets” and “currency” – neither of which are found in the Form U4 definition.¹⁰ The evaluation of whether a particular activity is “investment-related” is crucial under both the Proposed Rule (where it serves as a gatekeeping question to the applicability of the Rule) and Item 13 of Form U4 (where a registered person is required to disclose whether a particular outside activity is “investment-related”). Because of the different definitions, broker-dealers and their registered persons will be required to evaluate each reported outside activity under each definition, which is inefficient and will increase compliance burdens.

The Committee strongly recommends that FINRA initiate a parallel rulemaking to amend the reporting requirement under Item 13 of Form U4 and the “investment-related” definition in Form U4 to make them consistent with the Proposed Rule. As noted above, failing to do so could result in the Proposed Rule decreasing efficiency and increasing compliance burdens. The Committee notes that amending Form U4 to be consistent with the Proposed Rule would satisfy one of the primary goals of FINRA’s modernization initiative – looking at how FINRA’s rules may overlap and/or cause unnecessary burdens when compared with other regulatory requirements.¹¹ Here, the Committee’s comments are focused on burdens imposed on member firms because of an overlap between *two FINRA requirements* – an area that FINRA is uniquely positioned to address.

2. FINRA Should Specifically Exclude Additional Low-Risk, “Investment-Related” Activities from the Proposed Rule.

The Committee supports the express exclusion of certain activities from the scope of the Proposed Rule, such as personal trading, income received from rental properties, and activities performed on behalf of an affiliate, such as an affiliated insurance company. The exclusion of these

⁸ See Rev. Form U4 (05/2009), available [here](#).

⁹ See the Notice at pg. 4.

¹⁰ See Form U4 Explanation of Terms, available [here](#) (defining the term “investment-related” as “[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association)”).

¹¹ See RN 25-04, at pg. 5.

activities supports FINRA's goal of "enhanc[ing] efficiency without compromising protections for investors and members...."¹²

In addition to these exclusions, the Committee suggests that FINRA explicitly exclude the following activities from the Proposed Rule's reporting requirement, which are commonly engaged in by registered representatives and create little risk to investors or broker-dealers: (1) ongoing or intermittent fundraising for a non-profit organization; and (2) the receipt of residual insurance commissions (e.g., when a registered representative no longer has a relationship with his or her prior firm but is due residual commissions). The Committee believes that adding additional exclusions for these two categories of low-risk activities would reduce unnecessary regulatory burdens while enhancing the efficiency and effectiveness of the Proposed Rule.

3. FINRA Should Provide Guidance Regarding the Exclusion from Reporting the Purchase, Sale, Rental, or Lease of Certain Properties

The Committee requests that FINRA provide additional guidance on the scope of properties that are contemplated within Proposed Rule 3290(g)(3)(C). Proposed Rule 3290(g)(3)(C) notes that the rule "shall not apply to an associated person's... personal investments" including "the purchase, sale, rental or lease of a main home or dwelling unit or personal-use rental property, as defined for purposes of the Internal Revenue Code." Despite a reference to the Internal Revenue Code ("IRC") in the Proposed Rule text, neither the Proposed Rule text nor the Notice provide a citation to any specific section of the IRC. Further, it is not apparent whether the reference to the IRC in the Proposed Rule text is with respect to both the terms "main home or dwelling unit" and "personal-use rental property" or just with respect to the latter. It is also not apparent whether the exclusion is available only for a single property or whether it can apply to multiple properties owned by the same person. The Committee believes that additional guidance is warranted to ensure that the exclusion is applied consistently and uniformly across the industry.

CONCLUSION

Upon adoption of the Proposed Rule, FINRA staff should be prepared to entertain many questions that will likely arise, including (among other things) with respect to the different ways that property may be owned (e.g., directly through an associated person or through legal entities that might have multiple-owners) and/or used (for personal use or "hybrid" personal and investment use). Therefore, the Committee believes any rule adoption should be followed by a detailed series of FAQs to assist with interpretive issues associated with the new rule.

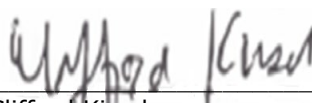
The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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¹² See the Notice at pg. 1.

Respectfully submitted,

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BY: 
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FOR THE COMMITTEE OF ANNUITY INSURERS