



**FINANCIAL  
SERVICES  
INSTITUTE**

VOICE OF INDEPENDENT  
FINANCIAL SERVICES  
FIRMS AND INDEPENDENT  
FINANCIAL ADVISORS

## **VIA EMAIL**

May 13, 2025

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1700 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) (the "Proposal")

Dear Ms. Mitchell:

On March 18, 2025, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 25-05 to request comment on a proposed rule to modernize and streamline the regulatory framework governing Outside Business Activities (OBAs) and Private Securities Transactions (PSTs).<sup>1</sup> The Financial Services Institute (FSI) commends FINRA for undertaking this initiative to modernize its rules, which is the culmination of a multi-year retrospective review. We appreciate FINRA's risk-based approach that reduces burdens associated with low-risk outside activities while maintaining appropriate investor protection for outside investment-related activities. The proposed consolidation of Rules 3270 and 3280 into a single rule (3290) also provides greater consistency.

FSI appreciates the opportunity to comment on this important proposal. We support the Proposal's approach to consolidating the OBA and PST rules and its delineation between investment-related and non-investment-related outside activities. FSI respectfully offers a few suggestions on the proposed rule aimed at providing additional clarity and fostering further efficiencies.

### **Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 152,000 independent financial advisors.<sup>2</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).<sup>3</sup>

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<sup>1</sup> FINRA, Regulatory Notice 25-05, *FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities* (Mar. 14, 2025), <https://www.finra.org/rules-guidance/notices/25-05>.

<sup>2</sup> Tiburon Strategic Advisors, Research on Independent Advisors (Dec. 18, 2024) (citing 152,200 in 2023).

<sup>3</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm, or a dual registrant.

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.<sup>4</sup>

## **Discussion**

### **I. Proposal Provides Greater Efficiency and Outlines a Tailored, Risk-Based Approach**

FSI has long supported regulations reasonably tailored to preserve appropriate transparency and oversight by IBD firms into outside business activities engaged in by their financial advisors. As noted in Regulatory Notice 25-05, FSI commented on Regulatory Notice 18-08 and suggested areas where the proposal could enhance investor protection.<sup>5</sup> FSI supports that this Proposal does not expand members' current obligations for outside investment adviser (IA) activities. In addition, we appreciate FINRA's further clarification and confirmation that the Proposal does not alter broker-dealers' obligations regarding outside unaffiliated IA activities.<sup>6</sup> While regulation and oversight of registered investment advisers, by their designated regulators, has arguably increased since FINRA proposed Regulatory Notice 18-08, FINRA's current obligations for members are not unreasonable.

#### **A. Consolidation of OBA and PST Rules Establishes Efficiency and Consistency**

FSI supports streamlining both the OBA and PST rules into one consolidated rule. This improves consistency and reduces confusion from two separate rules and standards. This change will also promote efficiency because firms will have the opportunity to streamline compliance processes for these areas. These operational efficiencies will be further enhanced by the Proposal's risk-based delineation between non-investment-related outside activities and investment-related ones.

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<sup>4</sup> Oxford Economics for the Financial Services Institute, *The Economic Impact of FSI's Members* (2020).

<sup>5</sup> See David T. Bellaire, Executive Vice President and general counsel, Financial Services Institute, FSI Comment on FINRA Regulatory Notice 18-08 (April 27, 2018).

<sup>6</sup> FINRA, *FINRA Statement to Correct Misinformation About FINRA's Outside Business Activities Rule*, News Release (May 5, 2025), <https://www.finra.org/media-center/newsreleases/2025/finra-statement-correct-misinformation-about-finras-outside>. (stating "[t]he proposal does not change the existing obligations regarding unaffiliated investment adviser activity ....").

## **B. The Risk Based Investment-Related and Non-Investment Related Distinction Promotes Efficiency while Maintaining Robust Investor Protection**

As previously noted, the Proposal narrows the focus to investment-related activities, which reduces unnecessary burdens for firms, while enhancing the core investor protection focus of the rule. FSI agrees that this focused, risk-based approach will benefit investor protection because it decreases burdens placed on compliance personnel and firm systems by eliminating the sheer volume caused by low-risk outside activities. This reduction will prevent the diversion of available resources so that firms can focus on investment-related activity. The Proposal reduces operational and supervisory burdens associated with monitoring a broader scope of activities. However, as discussed below, to meaningfully reduce these burdens for firms, FSI suggests that Form U4 should be revised to better align with the Proposal.

### **II. Alignment with Form U4 to Promote Efficiency and Suggested Clarification of Certain Terms Concerning Real Estate**

FSI offers additional comments on select areas where the Proposal could be modified to better achieve FINRA's objective of reducing unnecessary burdens. First, FINRA should consider better aligning Form U4 with this Proposal. Second, it would be beneficial to clarify certain terms and definitions concerning personal investments in non-securities and rental property. Lastly, FSI members will need time to implement the new Proposal by revising procedures and workflows. As a result, FSI suggests a nine to twelve-month transition period.

#### **A. U4 Alignment**

FSI suggests that FINRA collaborate with other regulators to revise Form U4, Uniform Application for Securities Industry Registration or Transfer, to align with the new rule that will result from this Proposal. In particular, the term investment-related, as used in this Proposal,<sup>7</sup> should be consistent with the *Explanation of Terms* section in FINRA's Form U4.<sup>8</sup> In addition, Section 13 of Form U4, "Other Business" should be reviewed and revised to align with the Proposal's risk-based approach.<sup>9</sup> FINRA should consider encouraging revision of Section 13 to use the same risk-based framework as the Proposal. Much like the Proposal, if Section 13 also clearly delineated the nature of outside activities (investment-related and non-investment related), it would promote efficiency for firms and regulators during their reviews. A consistent, structured approach could enable automated review, reduce errors associated with manually reviewing all outside activities in one section, and help both firms and regulators more effectively analyze industry trends in this

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<sup>7</sup> See FINRA Proposal, *supra*, at n. 1 (defining "'investment-related activity' as pertaining to financial assets, including securities, crypto assets, commodities, derivatives (such as futures and swaps), currency, banking, real estate or insurance.").

<sup>8</sup> See Form U4 Explanation of Terms (April – Version 2014.1), <https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf> (defining "Investment-Related" as "Pertains 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).").

<sup>9</sup> In addition, although Form ADV is not a FINRA document, collaboration between FINRA and the SEC to then also align Form U4 and Form ADV would be beneficial and promote efficiency. For example, consistency in defining the term "investment-related" in the glossary of Form ADV and Item 4 of Form ADV Part 2B, which is relevant for disclosing outside business activities, would promote clarity and efficiency. This is especially important for dual-registrants.

area. Without alignment, the Proposal's intended efficiencies and reduction of unnecessary burdens and costs will be significantly diminished. For example, firms will have to track slightly differently defined "investment-related activity" across separate but overlapping contexts. Misalignment in these areas can heighten complexity, add administrative burden, and increase the risk of confusion.

## **B. Clarifications to Certain Activities - Rental Property**

The Proposal also provides exclusions from the rule for certain activities. One of those activities is an exclusion for "personal investments in non-securities and 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. These exclusions recognize the lower risks to customers and members associated with these activities and the inefficiency of members' having to expend significant resources reviewing them."<sup>10</sup> While this section cross-references the term "personal-use rental property" as defined in the Internal Revenue Code (IRC), this description is not intuitive and FINRA should include a clear definition in the rule itself. The term "personal use rental property" is not explicitly defined in the IRC. If FINRA is referencing IRC §280A (Disallowance of certain expenses in connection with business use of home, rental of vacation homes), it is not evident whether an expense-deduction based provision intended for a different purpose is a natural proxy for this exclusion. As a result, the Proposal would benefit from its own definition in this section.

In addition, in reviewing this definition, FINRA could consider expanding this exclusion to include investment property owned specifically for the purpose of rental (e.g., VRBO and Airbnb), as they present the same lower risk profile. FINRA could consider limiting investment property ownership falling in this exclusion to: 1) Personally owned by the registered representative and "immediate family members" (as such term is defined by FINRA Rule 3240(c)); 2) Owned by the registered representative as a sole proprietorship; or 3) Owned by a trust, corporation, LLC, partnership, limited partnership, or other entity that is solely owned by the registered representative and "immediate family members". This suggested approach bears similarity to the essence of the provision FINRA referenced in the IRC, though the latter is centered on expense deductions rather than customer risk associated with outside business activities. Clarity through FINRA FAQs, outlining common scenarios, may also assist FINRA members by providing additional guidance and examples of the "personal investments in non-securities" referenced in Section (g)(3)(B) of the Proposed Rule.

## **C. Implementation Timeline**

FSI also asks FINRA to consider the time it will take firms to review a final rule stemming from the Proposal and to evaluate and implement needed changes. These changes include review and revision of supervisory procedures, operational workflows, as well as the education of supervisory staff and advisors. As a result, a nine to twelve-month transition period would be beneficial.

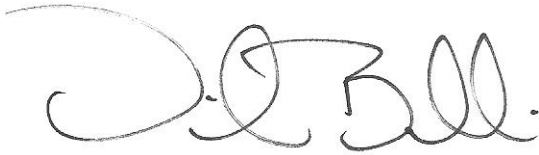
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<sup>10</sup> FINRA Proposal, *supra*, at n. 1 at 7.

**Conclusion**

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with FINRA on this and other important regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at 202-803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by the name "Bellaire".

David T. Bellaire  
Executive Vice President & General Counsel