



May 13, 2025

VIA ELECTRONIC SUBMISSION

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc. (FINRA)
1735 K Street, NW
Washington, DC 20006

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:

On behalf of the Insured Retirement Institute (IRI)¹, the leading trade association for the retirement income industry, we appreciate the opportunity to comment on FINRA Regulatory Notice 25-05 (Notice 25-05), which concerns proposed amendments to the rules governing Outside Business Activities (OBAs) of registered persons.²

IRI's members include the entire supply chain of insured retirement strategies—life insurers, asset managers, broker-dealers, banks, and marketing organizations—who collectively serve millions of Americans planning for a secure and dignified retirement. As such, we have a strong interest in ensuring that regulatory frameworks governing financial professionals remain effective, transparent, and appropriately tailored to diverse and evolving business models.

IRI supports FINRA's stated objective to modernize and simplify OBA regulations. However, we have significant concerns that, in its current form, the proposal would increase rather than reduce regulatory burdens, introduce ambiguity, and depart from the risk-based principles outlined in Regulatory Notice 18-08.³

Increased Burdens and Ambiguity

The expansive definition of "investment-related activity" proposed in Notice 25-05 unnecessarily broadens reporting requirements for associated persons, capturing transactions such as insurance sales, which are already comprehensively regulated at the state level. This approach introduces ambiguity,

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

² FINRA Request for Comment, *Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities*, Regulatory Notice 25-05 (Mar. 14, 2025).

³ FINRA Request for Comment, *Proposed New Rule Governing Outside Business Activities and Private Securities*, Regulatory Notice 18-08 (Feb. 26, 2018).

compelling firms to report and supervise numerous business operations of minimal risk, thereby countering FINRA's intent to streamline regulation.

Separately, although we appreciate the specific exclusions in proposed Rule 3290(g) for "personal investments", including for real estate rentals, and in general for non-investment-related activities, firms will still need to comply with the broader meaning of "other business" activity in Question 13 to the Form U-4, and, thus, as a practical matter will still require firms to collect from its employees such OBAs to answer that question, and the individual to report it on their Form U-4. We urge FINRA to work with the SEC and the States to harmonize Question 13 of the Form U-4 with the exclusions set forth in proposed rule 3290(g). Firms will still need to supervise such disclosures until such uniformity in the meaning of "outside activities" is harmonized.

Given that insurance is regulated at the state level, we recommend that FINRA revise the definitions across all relevant forms to explicitly exclude insurance in order to ensure consistency and clarity. IRI stands ready to collaborate with FINRA on this effort and offer industry expertise to support the development of appropriately tailored definitions.

Departure from FINRA Regulatory Notice 18-08

The current proposal significantly deviates from the principles articulated in FINRA's Regulatory Notice 18-08, which sought to clarify obligations and reduce unnecessary burdens by recognizing that certain outside activities, such as unaffiliated investment advisory services, are sufficiently regulated by other authorities. Notice 25-05 reintroduces obligations for broker-dealers to supervise activities already effectively overseen by other regulators, thus contradicting FINRA's previous stance.

Removal of Supervisory Obligations for Outside Investment Activities

IRI firmly believes broker-dealers should not bear supervisory responsibility for activities outside their control, such as advice offered by unaffiliated investment advisers. Such obligations lead to duplicative oversight and potential investor confusion regarding regulatory accountability, particularly when the industry and regulators have sought to clearly differentiate between brokerage and advisory services offered by a financial professional. Requiring member firms to supervise activity conducted through unaffiliated investment advisers creates a number of practical and policy concerns, including the following:

- Unaffiliated investment advisers are responsible for implementing their own policies and procedures to comply with securities laws. They are subject to the robust oversight of the SEC and/or state securities regulators, which makes it duplicative and onerous to require additional broker-dealer oversight. We urge FINRA to eliminate these unnecessary supervisory requirements and clearly delineate oversight responsibilities.
- Investment advisers are subject to a fiduciary standard when providing investment advice to customers. Broker-dealers are subject to the "best interest" standard set forth in SEC Regulation Best Interest⁴ (Reg. BI). While the adviser conduct standards in Reg. BI and the fiduciary standard applicable to investment advisers are similar, they contain substantive differences. In particular, the fiduciary standard includes an ongoing duty of

⁴ 17 CFR § 240.15I-1. (SEC's Regulation Best Interest, 2019).

loyalty that persists beyond the time of the investment recommendation. This ongoing duty is a substantial factor in determining if an investment advisory relationship exists.⁵ In adopting Reg. BI, the SEC properly noted that recommendations to customers in brokerage accounts do not include an ongoing duty of monitoring as investment advisory relationships typically do. Asking a FINRA member to supervise investment transactions that are subject to different standards, and with which the FINRA member may not even be familiar, adds little to investor protection and may even be counter-productive in that it may create an unfounded belief on the part of the investor that supervision by the broker-dealer is providing them an incremental benefit. This will likely result in confusion on the part of investors and FINRA member firms.

- Acquiring and reviewing data regarding transactions executed by unaffiliated investment advisers is cumbersome and often unreliable. Perhaps more importantly, FINRA members often only possess customer profile information that they collect in connection with the establishment or maintenance of brokerage accounts. Investment advisers typically utilize other facilities for the collection of customer profile information, such as extensive “Risk Tolerance” questionnaires that collect much more detailed information about customer risk tolerance and investment time horizons. Not only do investment advisers have a better ability to supervise activities conducted at their firms, but asking FINRA members to conduct an additional level of supervision without access to all of the relevant information is likely to result in inconsistent or conflicting conclusions.

Exclusion of Non-Securities Insurance Activities

The broad categorization of insurance products within the definition of “investment-related activity” is inappropriate. Fixed annuity and other non-securities insurance products are effectively regulated by state insurance departments and pose no demonstrable securities-related risk. We strongly recommend that FINRA explicitly exclude these products from OBA reporting and supervisory obligations.

Recognition of Dual-Licensed Professionals and Regulatory Coordination

Modern financial professionals often maintain multiple licenses and affiliations. FINRA should broaden the proposal’s affiliate exclusions to recognize legitimate, industry-standard dual-licensing arrangements that do not necessarily involve formal corporate affiliations. For example, insurance companies can opt to utilize a third-party broker-dealer and investment adviser for certain services. These arrangements allow firms to leverage a third-party for operational efficiency, scale, and broader access to services, all of which benefit retail investors. These arrangements are legitimate and contractual, and as such should not be subject to onerous oversight by a broker-dealer. Additionally, we emphasize the need for enhanced coordination with other regulators, including the SEC and state insurance authorities, to ensure consistent, non-duplicative oversight of the distinct services offered.

Recommendations

To reiterate our comments above, IRI urges FINRA to:

- Eliminate supervisory obligations for unaffiliated outside investment advisory activities.

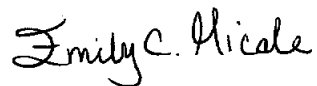
⁵ 84 FR 33669 (Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Nov. 23, 2023).

- Narrow the “investment-related activity” definition to exclude non-securities insurance products.
- Provide broader recognition for dual-licensed business structures beyond formal affiliates.
- Enhance clarity and adopt a risk-based regulatory framework.
- Strengthen coordination with relevant regulatory authorities.

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Thank you again for the opportunity to provide these comments. If you have questions about any of our comments or if we can be of any further assistance in connection with FINRA’s request for comments on the proposal related to outside business activities, please feel free to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Emily C. Micale". The signature is written in a cursive, flowing style.

Emily Micale
Director, Federal Regulatory Affairs
Insured Retirement Institute

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