LPL Financial

May 13, 2025

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 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:

LPL Financial Holdings, Inc. ("LPL" or "the Firm") appreciate the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") in response to *Regulatory Notice 25-05: FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons' Outside Activities* (the "proposal"). We commend FINRA for recognizing opportunities to modernize and streamline the rules governing outside activities and to eliminate the unnecessary burdens they impose. This proposal is a positive step towards modernizing the rules; however, LPL believes that FINRA should further refine the proposal to provide additional clarification around supervision obligations.

While FINRA's approach to reduce the "white noise" created by supervising benign outside business activities is welcomed, LPL is concerned that the proposal maintains the unnecessary, outdated requirement to supervise unaffiliated investment adviser ("IA") activities. This requirement is redundant given the distinct, robust regulatory oversight that investment advisers are already subject to by the U.S. Securities and Exchange Commission (the "SEC") and state securities regulators and leads to unnecessary investor confusion around the set of rules governing IA activity.

I. Overview of LPL

LPL Financial Holdings, Inc. is a retail investment advisory firm and independent broker-dealer operating in all 50 states and territories and the parent company of two dually registered FINRA member firms. We are steadfast in our belief that Americans deserve access to personalized guidance from a financial professional. LPL serves as a trusted partner to more than 29,500 financial professionals and the wealth management practices at approximately 1,200 financial institutions, servicing and custodying approximately $1.8 trillion in brokerage and advisory assets on behalf of approximately 7 million Americans. We offer a variety of affiliation models, including the ability to operate as a hybrid RIA that is a registered representative of LPL but operates as an unaffiliated RIA with the option to use third-party custodians for those advisory-related assets. Approximately 600 firms with 6,500 financial professionals are affiliated with LPL as an independent RIA.

We provide our financial professionals with the technology, research, clearing and compliance services and practice management programs they need to serve their clients and create thriving businesses. Our financial professionals offer investment and financial education, financial planning, access to investment products and brokerage services, and personalized investment advice to investors seeking wealth management, retirement planning, financial planning and asset management solutions.

II. Comments on the proposal

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LPL has been an active participant in FINRA's years-long review of the rules governing outside business activities and related guidance[1], some of which were issued more than thirty years ago. We strongly supported the 2018 proposal released in Regulatory Notice 18-08 ("RN 18-08" or the "previous proposal"), particularly because of FINRA's recognition in the previous proposal that supervision of unaffiliated IA activity by member firms is duplicative given the robust oversight of the U.S. Securities and Exchange Commission ("SEC") and state securities regulators and creates unnecessary investor confusion.

While we appreciate the changes proposed in the notice, we believe that FINRA should reconsider the proposed requirements regarding unaffiliated IA activity to align the proposal with RN 18-08 as well as provide additional clarity as discussed below.

FINRA Should Eliminate the Obligation to Supervise Other Regulated Investment Roles

LPL believes that FINRA's requirements to supervise unaffiliated investment adviser activities are duplicative and onerous. The previous proposal recognized the redundant nature of the requirement and noted that "these IA activities would continue to be subject to regulatory oversight by the SEC and states under a different regulatory regime. [2]" This recognition is continued in the current proposal, which states that "it is important to emphasize at the outset of this discussion that FINRA regulates BDs, while the SEC and states regulate IAs. BDs and IAs are also subject to different laws and rules. Moreover, while they at times engage in similar activities, BDs and IAs also provide distinct services and advice and employ different fee structures.[3]" These separate regimes, which are tailored based on the primary function of each regulated entity, should provide strong assurances to investors that the investment adviser is subject to appropriate oversight and compliance. It is unfair for FINRA to require its regulated entity – the broker-dealer – to apply additional supervision over transactions that are already being supervised by registered entities who are subject to oversight by the SEC or states, particularly when investment advisers are not required to supervise the brokerage activity of registered representatives.

Further, this obligation creates unnecessary confusion for retail investors. The SEC's Regulation Best Interest ("Reg BI")[4] was implemented with careful consideration to provide disclosure that distinguishes between brokerage recommendations subject to Reg BI and investment advice provided under the Investment Advisers Act of 1940 (the "Advisers Act"). The disclosure is designed to inform retail investors of, among other things, which set of rules the financial professional is subject to in the capacity they are acting, and who ultimately is responsible for oversight of the activity. Requiring broker-dealers to supervise outside investment activity of an unaffiliated investment adviser detracts from this by creating the perception that the broker-dealer is somehow responsible for investment advice provided by the investment adviser firm. This perception directly conflicts with Reg BI's goal of clarifying the differences between the brokerage and advice models and corresponding regulatory standards under Reg BI and the Advisers Act, respectively.

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[1] Regulatory Notice 17-20 (May 15, 2017) *available at* https://www.finra.org/rules-guidance/notices/17-20; Regulatory Notice 18-08 (February 26, 2018) *available at*: https://www.finra.org/rules-guidance/notices/18-08; *see* Letter from Michelle Oroschakoff, Chief Legal Officer, LPL to FINRA dated April 27, 2018 *available at*: https://www.finra.org/sites/default/files/18-08_LPL-FInancial_Comment.pdf

[2] *See* Regulatory Notice 18-08 (February 26, 2018) pg. 8

[3] Regulatory Notice 25-05 (March 14, 2025) *available at*: https://www.finra.org/rules-guidance/notices/25-05

[4] 17 CFR § 240.15l-1

Imposing on broker-dealers the obligation to supervise unaffiliated investment adviser activities also exposes broker-dealers to unreasonable risk of liability in the event of customer losses stemming from the investment advice they receive from the investment adviser firm. Investors may cite FINRA's current rule and *Notice to Members 94-44* and *Notice to Members 96-33* as a basis for liability even when, in reality, there is no causal connection between the adviser's role as an Associated Person ("AP") of the broker-dealer and the advice provided through an unaffiliated investment adviser. Updated rules will help underscore that it is the investment adviser, and IAR while acting in that capacity, who are responsible for compliance with the Advisers Act through their own policies and procedures. Broker-dealers that have no control over these programs should not be held liable for such misconduct.

Access to Customer Data to Meet Supervisory Obligations Regarding Outside IA Activities is Unduly Burdensome and Raises Privacy and Cybersecurity Concerns

Under the current rule and notices to members, in order to supervise outside IA securities transactions, broker-dealers must record the transactions and supervise the activity as though it were executed on behalf of the member. To do so, the broker-dealer needs access to customer records at both the unaffiliated IA and the custodian that the IA uses. For all entities involved, this requires the use of complex agreements to gain access to systems. This inherently gives rise to potential cybersecurity concerns and requires continuous monitoring and oversight to ensure that the information is being properly transmitted.

Importantly, this requirement also raises significant concerns about customer privacy and data sharing of personally identifiable information ("PII"). Clients of the investment adviser who do not use brokerage services may be unaware that an unaffiliated broker-dealer, that does not provide any direct services to the client or has any relationship with them at all, has access to their PII and retains the information in their books and records. This sensitive information should be maintained in as few places as possible in order to limit the possibility of resulting customer harm from a data breach.

In addition to the privacy concerns outlined above, the requirements from *Notice to Members 94-44* and *Notice to Members 96-33* are unduly burdensome to operationalize. Broker-dealers maintain specialized compliance and supervision teams to meet the obligations, which results in increased operational costs for headcount, technology and the like. This is reflected in broker-dealers implementing an oversight and compliance fee on outside RIAs, which could ultimately be passed on to retail investors in the form of higher advisory fees.

The Definition of "Affiliate" Should Include Certain Third-Party Relationships

Many independent broker-dealers have networking relationships with third-party institutions, including banks, credit unions and insurance companies which are governed by the networking rules and for nationally charted banks, the OCC[5]. These relationships allow an institution to outsource the functions of a broker-dealer and investment adviser to a third-party, such as LPL, to gain efficiency, leverage the scale of a third-party firm for technology, compliance and products, and prioritize spending time with clients. These relationships benefit both the institution and their clients, who can access a larger variety of financial products and services that otherwise might not be available.

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[5] FINRA Rule 3160; *see* Letter from Joseph Furey, Assistant Chief Counsel, Division of Trading and Markets, to Eric A. Arnold, Ira Hammerman and Carl B. Wilkerson dated April 23, 2013, *available at* https://www.sec.gov/files/tm/no-action/nal-sifma-120524.pdf; The Retail Nondeposit Investment Products booklet of the OCC Comptroller's Handbook

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Under the proposal, the definition of "affiliate" includes "any entity that controls, is controlled by, or is under common control with a member"[6]. This does not include institutions that are affiliated with and have employees who are associated persons of the broker-dealer, but are not under the common control of the FINRA member firm. We believe that the definition of "affiliate" should include an entity or individual that employs or contracts with a FINRA member firm for the use of broker-dealer and other regulated services.

Further Clarification is Needed for the Definition of "Investment-Related Activity"

The proposal introduces a new definition for "Investment-Related Activity"[7] that broadens the current requirements to supervise only unaffiliated outside securities transactions. While we appreciate that FINRA is seeking to capture certain outside business activities that would have been previously reported under Rule 3270, the definition of "investment-related activity" it overly broad and expands the requirements beyond current rules. For example, the proposal would require broker-dealers to keep books and records of each transaction when a registered representative of a broker-dealer sells a non-securities insurance product. Similarly, recorded transactions would be required for certain activities at banks or credit unions where the registered representative receives "selling compensation", which is broadly interpreted. This represents a significant expansion of the current requirements and would inadvertently subject entities outside of FINRA's jurisdiction to its rules and oversight. We ask that FINRA limit the definition of "investment-related activity" to securities transactions.

Support for Proposed Treatment of Non-Investment-Related Outside Business Activities

Reporting and supervising outside business activities that do not include selling compensation or securities transactions requires significant resources within firms, without providing meaningful investor protection. We strongly support the proposal's goal of streamlining this oversight by eliminating the requirement to report and approve benign activities such as volunteer youth sports coaching, serving on a local civic board, farming and the like. These activities are routine, do not create investor harm, and divert firm resources that could be used in other areas. Accordingly, LPL encourages the SEC to swiftly approve these changes.

III. Conclusion

Thank you for your consideration of this letter and for FINRA's continued commitment to modernizing the rules governing outside business activities. We believe that this proposal represents positive progress towards a new rule. However, the new rule should eliminate the requirement to supervise outside IA activity in order to truly modernize the rule and create an efficient process for supervising outside business activities. I look forward to continuing to work with FINRA on this important initiative.

Kind regards,

Althea Brown

Althea Brown
Group Managing Director and Chief Legal Officer

[6] *Supra* note 3, Attachment A, Proposed Rule 3290(f)(1)
[7] *Supra* note 3, Attachment A, Proposed Rule 3290(f)(2)