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May 13, 2025

By email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 25-05: *Outside Activities*

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to Financial Industry Regulatory Authority, Inc. ("FINRA") Regulatory Notice 25-05: *Outside Activities* (the "Proposal").[2] The Proposal seeks to streamline existing requirements for FINRA member firms to oversee their associated persons' outside activities. Oversight of outside business activities and private securities transactions is important not only to protect investors, but also to maintain investor trust in the markets and market intermediaries, and to provide information for regulators, including state securities regulators, to carry out their duties.

The proposed rule change would combine current FINRA Rules 3270 and 3280 into a new Rule 3290 and would narrow the kinds of activities that are subject to the requirements. FINRA proposed similar rule changes in 2018 (the "2018 Proposal"),[3] and while the current Proposal is an improvement in certain respects, it still suffers from defects that will undermine investor protection unless they are addressed. FINRA member firms' oversight of their own personnel is a necessary complement to, not a replacement for, state and federal regulation of registered firms and individuals. In order to more effectively balance these responsibilities, the definition of "investment-related activity" should be broader, as described below. Additionally, FINRA

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] The Proposal is available at https://www.finra.org/sites/default/files/2025-03/Regulatory-Notice-25-05_1.pdf.

[3] *See* Regulatory Notice 18-08; Letter from Joseph P. Borg, NASAA President and Alabama Securities Commissioner, to FINRA re: Regulatory Notice 18-08 (Apr. 27, 2018) ("2018 NASAA Letter"), https://www.nasaa.org/wp-content/uploads/2018/04/NASAA-18-08-Comment-Letter-4-27-18.pdf.

member firms should continue to be required to supervise and maintain records related to their associated persons' activities at unaffiliated investment advisers.

I. Firms' oversight of their associated persons is a necessary complement to state and federal regulation.

Effective regulation and supervision are the cornerstones of our capital markets regulatory structure. State and federal law, and a body of rules and regulations, have been built on this foundation with the common goal of combating and preventing harmful conduct in the securities industry. Regulation and supervision are related concepts, but they are distinct. FINRA rules rightly require member firms to maintain written supervisory procedures and implement supervisory control systems to help ensure that they and their associated persons remain compliant with applicable laws and rules. No regulator has the same insight as FINRA member firms do into their associated persons' day-to-day activities. Thus, FINRA member firms have important direct supervisory responsibilities, with FINRA, the Securities and Exchange Commission ("SEC"), and NASAA members providing additional periodic examinations and reviews.

The oversight framework for outside business activities and private securities transactions is a prime example of this shared responsibility. Fraud and other kinds of misconduct arising from outside activities and securities transactions by broker-dealer associated persons are perennial problems for regulators, investors, and the securities industry. Problems in this area can frequently be traced to undisclosed, and therefore unknown, outside business or sales activities. Broker-dealers themselves are the first line of defense for investors and have the best access to the day-to-day activities of their associated persons. Therefore, it is appropriate for FINRA member firms to have strong oversight responsibilities over these activities. Supervision and recordkeeping, in turn, help facilitate effective regulatory oversight, examination, and enforcement by ensuring that regulators have the information necessary to fulfill their regulatory obligations.

The Proposal is a significant improvement from the 2018 Proposal, but further changes should be made to ensure that firms' obligations are appropriately tailored to maximize investor protection.

II. The definition of "investment-related activity" should be broader.

The Proposal would retain much of current Rules 3270 and 3280, but, as explained, "narrows the focus to *investment-related activities* to reduce unnecessary burdens while maintaining the core investor protections of the existing rules."[4] In order to truly "maintain[] the core investor protections," the definition of "investment-related activity" should be calibrated to reach a broad range of activities. A broader definition would help to ensure that proposed Rule 3290 remains applicable as technology, products, and the markets continue to evolve. It would also help to ensure that both regulators and FINRA member firms have access to the information they need to effectively supervise and oversee the securities industry, including the assessment of

[4] Proposal at 4.

how regulatory standards, such as Regulation Best Interest and applicable state rules,[5] apply to new technologies, products, or services.

The text of the definition in the Proposal is an improvement from the overly narrow definition in the 2018 Proposal. Among other positive changes, we appreciate that the Proposal clarifies that the definition broadly "pertain[s] to financial assets" and includes a wide range of illustrative examples to underscore its broader scope. However, the definition neglects to specify certain kinds of activities that should expressly be included, as suggested below. Leaving those activities off an otherwise broad list would likely inhibit effective day-to-day firm oversight by implying that those activities are not within the scope of the rule. Ignoring these other activities would undermine investor protection because it would increase the likelihood that firms would fail to identify risks posed by unmitigated conflicts of interest, questionable compensation arrangements, and potential fraud and unregistered activity. Therefore, we recommend that the definition of "investment-related activity" be revised as follows:

(2) "Investment-related activity" means pertaining to financial assets, including**, but not limited to,** securities, crypto assets,[6] **collectibles,** commodities, derivatives (such as futures and swaps), currency, banking, **lending,** real estate or insurance.

(A) The term includes, but is not limited to, acting as or being associated with a FINRA member firm; issuer; insurance agent or company; investment company; **private fund; investment partnership or cooperative; crypto asset developer, promoter, or market intermediary;** investment adviser; futures commission merchant; commodity trading advisor; commodity pool operator; municipal advisor; futures sponsor; bank; savings association; ~~or~~ credit union**; or money transmitter, regardless of whether any of the foregoing is properly registered or licensed with appropriate regulatory authorities**.

(B) [*No changes recommended*.]

Collectible assets, such as art, whiskey, and wine, are now commonly marketed and sold as investments, and such offerings have been the subject of multiple state enforcement actions in

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[5] *See*, *e.g.*, 950 Mass. Code Regs. § 12.207 (Fiduciary Duties of Broker-Dealers and Agents); Nev. Rev. Stat. § 90.575 (Fiduciary duty of broker-dealers, sales representatives, investment advisers and representatives of investment advisers; regulations); NASAA Model Rule, *Dishonest or Unethical Business Practices of Broker-Dealers and Agents*, § 1.d. (amended Apr. 7, 2025), https://www.nasaa.org/wp-content/uploads/2025/04/BD-Dishonest-Unethical-BusPrac_FINAL_4-7-25.pdf.

[6] We would also recommend that FINRA define and apply "crypto assets" broadly to include any financial asset issued or transferred using blockchain or other distributed ledger technology, in order to maintain the longevity of the definition of "investment-related activity."

recent years.[7] While these investments may be good for some investors, they frequently require long holding periods, offer limited liquidity, and include hidden costs that could undermine expected returns.[8] In many cases, these investments are sold on the premise that someone other than the investor will hold or store them in specialized facilities, which often results in a lack of transparency that can enable fraud.[9] Investments marketed as loans or lending have also caused massive harm to investors in the not-so-distant past. In one prominent example, the promoters of the $1.2 billion Woodbridge Ponzi scheme aggressively marketed the interests as commercial loans, rather than securities.[10]

Advancements in technology, such as tokenization, could make it easier to offer risky alternative investments like those described above to everyday investors.[11] However, it would also expose those investors to new risks not only from the applicable token ecosystem but also from assets with which they, and perhaps even the person selling the investment to them, may be unfamiliar. The risk of fraud tends to increase in periods of economic uncertainty and market volatility, similar to the circumstances in our capital markets today. In these conditions, state and federal regulators frequently see cases in which promoters seek to use investors' fear or sense of

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[7] *See*, *e.g.*, Consent Order, *Masterworks Administrative Services, LLC*, Order No. REG-24-CAF-04 (Tex. State Sec. Bd., June 17, 2024), https://ssb.texas.gov/sites/default/files/2024-06/REG_24_CAF_04.pdf (failure to register as a dealer and failure to file notice of exempt offering in connection with offer and sale of fractional interests in artwork through shares of a limited liability company); Emergency Cease and Desist Order, *Whiskey & Wealth Club Ltd. et al.*, Order No. ENF-21-CDO-1853 (Tex. State Sec. Bd., Nov. 2, 2021), https://www.ssb.texas.gov/sites/default/files/2021-11/ENF_21_CDO_1853.pdf (fraudulent investments in pallets of whiskey, to be sold after designated holding period at claimed estimated 10-20% profit per year held); Summary Cease and Desist Order, *Charles Winn, LLC et al.*, Div. Case No. 117252 (Iowa Ins. Div., Aug. 1, 2023), https://iid.iowa.gov/media/4556/download?inline (unlawful and fraudulent investments in French wine); Summary Cease and Desist Order, *Windsor Jones, LLC et al.*, Div. Case No. 114218 (Iowa Ins. Div., Oct. 31, 2022), https://iid.iowa.gov/media/4535/download?inline (same).

[8] *See*, *e.g.*, Bryan McKenzie, *Stocks, Bonds and Wine: For Some Investors, Collectibles Provide Diversity*, The Darden Report (July 27, 2023), https://news.darden.virginia.edu/2023/07/27/investing-in-collectibles/; Shane Hickey, *Liquid gold? Here's the sobering truth about investing in whisky*, The Guardian (Apr. 10, 2023), https://www.theguardian.com/money/2023/apr/10/liquid-gold-heres-the-sobering-truth-about-investing-in-whisky.

[9] *See*, *e.g.*, *Liquid gold?*, *supra* note 8.

[10] *See*, *e.g.*, Consent Order, *Woodbridge Mortgage Investment Fund 1, LLC et al.*, Docket No. E-2015-0039 (Mass. Sec. Div., May 4, 2015), https://www.sec.state.ma.us/divisions/securities/download/Woodbridge_Consent_Order.pdf; Press Release, SEC, *SEC Charges Operators of $1.2 Billion Ponzi Scheme Targeting Main Street Investors* (Dec. 21, 2017), https://www.sec.gov/newsroom/press-releases/2017-235.

[11] *See*, *e.g.*, BlackRock, Larry Fink's 2025 Annual Chairman's Letter to Investors, https://www.blackrock.com/corporate/investor-relations/larry-fink-annual-chairmans-letter#from-retirement-to-tokenization (viewed Apr. 16, 2025) (explaining that "every asset . . . can be tokenized" and contending that this "will revolutionize investing" by, *e.g.*, facilitating fractional ownership of assets like real estate and private equity); Yuval Rooz, *How tokenization is transforming global finance and investment*, World Economic Forum (Dec. 10, 2024), https://www.weforum.org/stories/2024/12/tokenization-blockchain-assets-finance/.

insecurity to convince them to buy alternative investments, often using funds from their 401(k) or other retirement accounts.[12]

The proposed rule should also specify that "investment-related activity" includes acting as or being associated not only with investment companies, but also private funds and other structures like investment partnerships or cooperatives. Reporting, scrutiny, and supervision of outside activities with these kinds of private investment vehicles is particularly important because these investments tend to be opaque and are increasingly being offered to retail investors.[13] Since they also tend to be lightly regulated, if at all, these investments also present opportunities for fraud, including Ponzi schemes.[14] The rule text should also include "crypto asset developer, promoter, or market intermediary" in the definition. As tokenization and crypto assets move further into the mainstream and crypto assets are integrated into new and existing regulatory regimes, it will be increasingly important for FINRA member firms to understand that association with a variety of actors in this space is subject to proposed Rule 3290, regardless of whether the activity involves the offer of or transactions in any particular crypto asset.

Finally, the Proposal rightly makes clear that it "does not impact reporting on Form U4."[15] In other words, the Proposal will not change the existing obligations to provide information on Form U4 about additional registrations with other firms (whether affiliated or not),[16] employment history,[17] or other business activities.[18] It also will not limit the information that must be disclosed

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[12] *See cf.* Complaint, *CFTC et al. v. TMTE, Inc. a/k/a Metals.com et al.*, Case No. 3-20CV2910-L, ¶¶ 31-41, 118 (N.D. Tex., Sept. 22, 2020), https://www.ssb.texas.gov/sites/default/files/Metals.com-Barrick%20Complaint_File%20Stamped_0.pdf.

[13] *See* Yieldstreet, *How Retain Investors Can Now Tap Into Private Equity* (Jan. 31, 2024), https://www.yieldstreet.com/blog/article/retail-investors-private-equity/; Adam Lewis, *Opaque private equity is marketing to retail investors despite pushback*, PitchBook (June 2, 2021), https://pitchbook.com/news/articles/private-equity-marketing-to-retail-investors-despite-pushback; Adam Lewis, *Investors are wary about private equity's new access to 401(k)s*, PitchBook (June 18, 2020), https://pitchbook.com/news/articles/investors-wary-about-private-equitys-401ks.

[14] *See*, *e.g.*, Complaint, *People v. Nova Tech Ltd. et al.* (N.Y. Sup. Ct., June 6, 2024), https://ag.ny.gov/sites/default/files/court-filings/not_assigned_people_of_the_state_of_v_people_of_the_state_of_complaint_2.pdf; Final Order, *Gold Street Capital Fund, LP and Lovet Ako*, No. 2017-0912 (Md. Sec. Div., Feb. 27, 2020), https://www.marylandattorneygeneral.gov/Securities%20Actions/2020/GoldStreetFinalOrder_022720.pdf; Stipulation and Consent Order, *Roger Edward Taylor, CRD #4634268 and FFCF Investors, LLC*, Docket No. SD-18-0001 and Docket No. SD-18-0002 (Utah Div. of Sec., Aug. 2, 2018), https://db.securities.utah.gov/dockets/18000205.pdf; Administrative Complaint, *Raymond K. Montoya et al.*, Docket No. E-2017-0040 (Mass. Sec. Div., June 8, 2017), https://www.sec.state.ma.us/divisions/securities/download/RMA-Administrative-Complaint-E-2017-0040.pdf.

[15] Proposal at 18 n.11.

[16] *See* Form U4, Items 3, 6.

[17] *See id.*, Item 12.

[18] *See id.*, Item 13.

on Form U4 regarding certain "investment-related" conduct, disputes, and disciplinary actions.[19] This is appropriate because Form U4 is a shared form maintained by both NASAA members and FINRA. If FINRA believes that amendments to Form U4 would be appropriate in the future, it will need to coordinate with NASAA's CRD/IARD Forms & Process and CRD/IARD Steering Committees before proposing any changes. NASAA is open to discussing expanding the definition of "investment-related" on Form U4, consistent with the broader definition of "investment-related activity" included in the Proposal and amended in the manner discussed above.

In order for the proposed rule to adequately protect investors, the definition of "investment-related activity" needs to be broad enough to cover the full range of products, services, and activities that might put investors at risk of conflicts, fraud, or other abusive practices. NASAA's proposed revisions would make explicit that FINRA member firms must scrutinize participation in these other kinds of activities, that the list is not exclusive, and that it is immaterial whether the person or entity engaging in the outside activity is meeting all of its primary regulatory obligations.

III. FINRA member firms should continue to be required to supervise and maintain records related to their associated persons' activities at unaffiliated investment advisers.

The Proposal appropriately walks back one of the most concerning aspects of the 2018 Proposal – namely, eliminating FINRA member firms' supervisory and recordkeeping obligations for unaffiliated outside investment advisory activity – and retains FINRA member firms' obligations in this area.[20] However, the Proposal also seeks commentary about whether to exclude unaffiliated outside investment advisory activity from the rule altogether.[21] FINRA member firms can and should continue to be held to these responsibilities because they have unique insights into the day-to-day activities of their associated persons, and the availability of records from FINRA member firms helps to enable effective and efficient regulation of the industry. If anything, FINRA should modernize its rules to require that FINRA member firms supervise and maintain records of these activities regardless of the manner in which an advisory client chooses to implement the associated person's investment advice.

NASAA members are the primary regulators of more than 16,000 investment advisers who are collectively responsible for more than $360 billion of investor assets, as well as the investment adviser representatives associated with those firms.[22] The vast majority of state-registered

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[19] *See id.*, Item 14.

[20] *See* 2018 NASAA Letter at 3-4 (opposing the proposed removal of FINRA member firms' supervisory and recordkeeping responsibilities for outside activities at third-party investment advisers).

[21] *See* Proposal at 12, 15.

[22] *See* NASAA Investment Adviser Section 2024 Annual Report, 3 (Sept. 2024), https://www.nasaa.org/wp-content/uploads/2024/09/IA-Section-2024-Report_Final.pdf. NASAA members are also the only licensing authorities for investment adviser representatives of SEC-registered investment advisers that notice-file with the states.

investment advisers are small one- or two-person businesses.[23] State securities regulators conduct routine oversight of these firms and individuals through robust programs involving licensing, examinations, and enforcement where appropriate.[24] But even the strongest regulatory oversight is no substitute for day-to-day *supervision* by FINRA member firms of their own associated persons. As explained above, both regulation and supervision are necessary to protect investors. Regulators provide oversight, but it is firms, not regulators, that have the best access to the day-to-day activities of their associated persons. This is why NASAA previously stated, and we reiterate here, that "[e]liminating FINRA firms' responsibilities in this area would place investors at risk by eliminating day-to-day oversight in favor of *routine, but intermittent* state and federal securities regulatory oversight to identify or prevent misconduct."[25]

Indeed, securities regulators continue to uncover egregious frauds and other misconduct that could have been prevented by firm-level oversight. In one example, the Ohio Division of Securities issued orders notifying two individuals of its intent to suspend or revoke their investment adviser representative licenses, following disclosure that each was "permitted to resign" from their broker-dealer "while under internal review for violation of firm policy with respect to private securities transactions."[26] The two individuals were later indicted, along with several others, for their role in a fraudulent scheme that bilked at least 200 investors out of $72 million.[27] While this fraud could likely have been prevented by appropriate reporting and supervision, the existing requirements and the broker-dealer's efforts to comply with them undoubtedly helped to uncover this fraud before more investors were harmed.

More recently, regulators in Michigan took action to suspend and revoke the agent registration of an individual for engaging in dishonest or unethical business practices in the securities business, acting as an unregistered investment adviser representative, and making false

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[23] *Id*. at 5.

[24] *See*, *e.g.*, NASAA, 2023 Investment Adviser Coordinated Exams (Sept. 11, 2023), https://www.nasaa.org/wp-content/uploads/2023/09/2023-Investment-Adviser-Coordinated-Exams.pdf (stating that between January 1 and July 31, 2023, NASAA members examined 683 state-registered investment advisers, including 232 investment advisers examined for the first time by the relevant jurisdiction).

[25] 2018 NASAA Letter at 4 (emphasis added); Proposal at 13 (quoting 2018 NASAA letter, but disingenuously omitting the words, "routine, but").

[26] *See* Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Douglas S. Miller, CRD No. 1946240*, Order No. 17-013 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017); Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Gary L. Rathbun, CRD No. 1084721*, Order No. 17-012 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017). The State of Michigan also took action to revoke the investment adviser representative registration of one of these individuals. *See* Final Order, *Douglas S. Miller, CRD No. 1946240*, Docket No. 17-003806 (Mich. Dept. of Lic. and Reg. Affairs, Corp., Sec. & Comm. Lic. Bur., Mar. 7, 2018), https://www.michigan.gov/-/media/Project/Websites/lara/cscl/Folder1/Miller_Douglas_NOI.pdf?rev=0f4d2e3244f649fe86be3e141be280a8.

[27] *See* Ohio Atty. Gen., Press Release, *Reindictment Filed in Investment Case* (July 17, 2024), https://www.ohioattorneygeneral.gov/Media/News-Releases/July-2024/Reindictment-Filed-in-Investment-Case.

or misleading statements in a proceeding under the Michigan Uniform Securities Act.[28] The state regulator alleges that this individual, through an unregistered entity that was not affiliated with his broker-dealer, sent at least six of his brokerage customers invoices that purported to charge investment advisory fees on securities and insurance products that he had sold to them. The individual allegedly lied about the invoices when questioned by the broker-dealer's Chief Compliance Officer, and was terminated because "[t]he firm ha[d] reason to believe that the RR violated firm policies by engaging in an undisclosed outside business activity as an unlicensed investment adviser representative."[29] Appropriate reporting and firm-level supervision could have prevented this misconduct, and this matter further demonstrates the importance of FINRA member firms being responsible for supervision and recordkeeping in this area. When the individual sought registration with a new FINRA member firm, he allegedly misrepresented the reasons for his prior termination to the regulator's registration staff. He was later terminated by his new firm for "not provid[ing] full disclosure of the circumstances that led to his termination from his prior broker dealer when applying for affiliation with [the firm]."[30] Once again, the existing requirements and the broker-dealer's efforts to comply with them were critical to ensure that regulators had the information necessary to identify potential issues and take regulatory action to protect investors.

In addition to supervision, FINRA member firms should be required to maintain books and records related to unaffiliated investment advisory relationships. This serves a useful investor protection purpose. When state securities regulators, the SEC, and FINRA conduct examinations, they routinely request trade data and other types of information feeds. The availability of such records related to third-party relationships through FINRA member firms is extremely useful, even if it may be duplicative of information the adviser or other entity is required to maintain. Without this recordkeeping requirement, it would be more difficult for regulators to obtain or validate such data in broker-dealer or investment adviser examinations, investigations, and enforcement actions.

If anything, these requirements should be strengthened, not loosened, by ensuring that FINRA member firms supervise and keep records related to their associated persons' unaffiliated advisory activity regardless of the manner in which an advisory client implements the associated person's investment advice. Under the Proposal, a FINRA member firm's supervisory and recordkeeping obligations depend on whether the associated person "participate[s] in the execution of the transaction" by placing the order or otherwise effecting the transaction.[31] This is because FINRA (then NASD) determined that taking these steps constitutes "participation in" a private

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[28] *See* Notice of Intent to Revoke Securities Agent Registration and Order of Summary Suspension, *Jody Vander Weide, CRD No. 2571083*, Docket No. ENF-25-020027 (Mich. Dept. of Lic. and Reg. Affairs, Corp., Sec. & Comm. Lic. Bur., Mar. 25, 2025), https://www.michigan.gov/lara/-/media/Project/Websites/lara/cscl/NonImages_new/SecuritiesOrders/2025/ENF-25-020027-Jody-Vander-Weide-NOI-to-Rev-Agent-and-Summ-Susp-Order-03-25-25.pdf?rev=8fa269155c0e45ad8c8b8bb910f435f2.

[29] BrokerCheck, Jody Ryan Vander Weide, Disclosures, "3/15/2024 Employment Separation After Allegations" (last viewed May 6, 2025), https://brokercheck.finra.org/individual/summary/2571083.

[30] *Id*. at "4/10/2025 Employment Separation After Allegations."

[31] *See* Proposal at 7; NASD Notice to Members 94-44 (May 1994); NASD Notice to Members 96-33 (May 1996).

securities transaction. Therefore, the activity is subject to the approval, supervision, and recordkeeping requirements of FINRA Rule 3280 rather than the simple notice requirements for outside business activities under Rule 3270.

This requirement was originally intended to filter out transactions that were "executed by customers *independently*."[32] The distinction made sense in the early days of electronic trading, when most investors still had to rely on financial professionals to effect transactions. However, the markets have evolved since NASD Notices 94-44 and 96-33 were issued, and investors now have unprecedented access to the markets through various web-based platforms and applications. Thus, an investor entering their own trades is no longer a convincing indicator of independence between the advice and its implementation. When an associated person provides and is paid for investment advice, they have undoubtedly influenced the client's decisions, regardless of who ultimately clicks the buy or sell button. The distinction also creates an opportunity for associated persons to minimize scrutiny of potentially risky and conflicted advice by directing the clients relying on their advice to execute trades themselves using one of these platforms. FINRA should close this loophole and require its member firms to supervise and keep records related to unaffiliated investment advisory activity, regardless of the manner in which a client chooses to implement the associated person's advice.

A reasonable alternative would be to require supervision and recordkeeping when the associated person does not "participate in" the transaction, as long as (i) the activity involves a customer of the FINRA member firm, (ii) the activity is reasonably likely to interfere with or otherwise compromise the associated person's responsibilities to the firm or the firm's customers, or (iii) the activity is reasonably likely to be viewed by the firm's customers or the public as part of the firm's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Proposed Rule 3290 already requires firms to consider these and other factors, "at a minimum," upon receiving notice of the proposed outside activity, so the assessment would not meaningfully increase the burden of compliance with the rule. This approach would better align the oversight framework for outside investment advisory activities with the realities of the modern securities industry and the needs of investors, while mitigating the compliance burden on FINRA member firms.

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[32] NASD Notice to Members 94-44 (emphasis added).

IV. Conclusion

NASAA appreciates the opportunity to comment on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Leslie M. Van Buskirk

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NASAA President and
Administrator, Division of Securities
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