May 14, 2025

VIA ELECTRONIC SUBMISSION

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1700 K Street, NW
Washington, DC 20006

Re: Regulatory Notice 25-05: Outside Activities

Dear Ms. Piorko Mitchell,

SIFMA[1] submits comments on the Regulatory Notice (RN) 25-05,[2] proposing changes to the rules governing the supervision of outside activities of associated persons. SIFMA has long supported FINRA's efforts to reduce unnecessary burdens and simplify requirements with respect to Rule 3270 (outside business activities of registered persons) and Rule 3280 (private securities transactions of associated persons).[3] We appreciate FINRA's incorporation of our past comments in the proposal, most importantly, narrowing the scope of consolidated Rule 3290 to investment-related activities and securities transactions, which will reduce the burden on firms while maintaining investor protection. FINRA should finalize the proposed changes to the supervision of investment-related activities in short order but continue in haste to resolve outstanding issues, including continuing to require supervision of unaffiliated investment

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] Regulatory Notice 25-05 (Mar. 14, 2025), https://www.finra.org/rules-guidance/notices/25-05

[3] SIFMA comment on RN 18-08 (Apr. 27, 2018), https://www.finra.org/sites/default/files/18-08_SIFMA_Comment.pdf and RN 17-20 (June 29, 2017), https://www.finra.org/sites/default/files/notice_comment_file_ref/17-20_SIFMA_comment.pdf

advisers, that hinder its stated goals in the notice and clarifying statement.[4]

1. **The disparities between the disclosure requirements of Proposed Rule 3290 and Form U4 must be addressed**

FINRA recognized that the proposal does not "perfectly align" with activities reportable on the Form U4, and therefore it will need to work with the states to address the difference in the "investment-related" definition in Rule 3290 and the Form U4 to achieve its goal of meaningfully reducing unnecessary burdens and simplifying requirements.[5] Section 13 of the Form U4 requires disclosure of a registered person's being "currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise" and allows for exclusion of non-investment-related activity. This means that firms are still required to ask their registered employees to answer Section 13 but then must decide how (or if) to supervise activities that are outside the scope of Rule 3290. If firms choose not to supervise, then there is a material risk that regulators with the benefit of hindsight second-guess their decision not to follow up on and supervise outside activity disclosed on the Form U4.

We recognize that any conforming changes to the Form U4 require the approval of the SEC and agreement with state securities regulators. We do, however, request that FINRA affirmatively state in Rule 3290, or provide an FAQ at the very least, that firms are not obligated to comply with Rule 3290 as it relates to non-investment-related outside activities disclosed on the Form U4.

2. **Narrow the scope of the required assessment to a customer of the associated or registered person**

In the proposal rule, FINRA adds a '…minor addition that the member must consider whether the activity or transaction involves the member's customer(s)" on the basis that firms engage in a similar analysis today.[6] However, that is not the case and read broadly this proposed obligation would be impossible to fulfill. Unless an activity or transaction involves a registered person's or an associated person's own customer, they will have no way of identifying for purposes of any adequately notifying the firm whether a customer of the firm is involved. Likewise, a firm's compliance or supervision teams evaluating said outside activity or transaction will have no way of independently verifying whether any of the parties include a customer of the firm. We suggest that FINRA clarify and narrow this assessment criteria to a "customer of such associated or registered person." Doing so will target the concerns that FINRA

[4] FINRA Statement to Correct Misinformation About FINRA's Outside Activities Proposal (May 5, 2025), https://www.finra.org/media-center/newsreleases/2025/finra-statement-correct-misinformation-about-finras-outside

[5] *Supra* note 2 at FN 11. In doing so, FINRA should also remove the requirement to disclose the name and address of these businesses, as required by the Form U4 instructions. These businesses appear on BrokerCheck and could confuse investors about their nature.

[6] *Supra* note 2 at p. 6.

is aiming to address through the assessment in a way that is attainably verifiable for both the associated or registered person and the firm.

3. **Clarify that certain board-related activities are out of scope**

FINRA should clarify in an FAQ that a registered person serving on the board of a nonprofit for compensation and advising on investment strategies in a personal capacity should not be considered an outside activity subject to Rule 3290's requirements.[7] On its face, this commonplace situation could appear as an investment-related activity and the registered person could be construed as receiving selling compensation. Further, FINRA should clarify that an uncompensated board member participating in an investment committee is not considered an outside activity.

4. **Rule 3290 should not be expanded to include outside activities of associated persons**

FINRA requests comment if the proposal should be expanded to include the outside activities of associated persons. The rationale for approving and supervising the outside activities of registered persons does not apply to associated persons. They are not engaged in sales activities and do not present the same risk of investor confusion or conflicts of interest. Such an expansion would impose substantial burdens on firms without commensurate benefit to investor protection. Firms are subject to other requirements under Rule 3110, such as a reasonably designed supervisory system and inspections of non-branch locations, and firm policies, to address any risks posed by associated persons' outside activities. The proposal should not be expanded without clear and convincing evidence that the benefit to investor protection would dramatically outweigh the burden this expansion would impose on firms.

5. **Clarity which real estate activities are within scope of the rule**

The definition of "investment-related activity" in the proposed rule includes "real estate;" however, it is not defined. Notwithstanding the examples of real estate activities excluded, it would be beneficial in the near future for FINRA to clarify through additional examples which real estate activities are considered investment-related. We also think it would be helpful to include the Internal Revenue Code section and its successor in the language of the rule.

6. **Imposing more burden than benefit, the duty to supervise unaffiliated advisory activities and activities known through contractual relationships should be eliminated**

Although we would like the proposed changes to be approved by the SEC in short order, we reiterate our position that FINRA should eliminate the requirement for broker-dealers to supervise unaffiliated investment advisory (IA) activity, as a majority of commenters requested.

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[7] When FINRA amended the gifts and gratuities rule to harmonize the NASD and NYSE rules, it did not include supplementary material in the NASD rule regarding business entertainment, deal mementos, etc. As such, it is not clear whether this helpful guidance could be relied upon for Rule 3290.

It imposes a disproportionate burden on a small percentage of members, as FINRA recognizes,[8] without commensurate benefit to investor protection. Proponents' perception that the SEC or states securities regulators have failed to adequately supervise investment advisory activities alone cannot be a justification for imposing requirements on a small group of broker-dealers, unless they voluntarily chose to supervise such activity. FINRA should also consider excluding outside activities that are already known through contractual relationships with the firm, rendering the notification and review of such activity unnecessary. Examples include registered persons who are also employees of a bank, credit union, or insurance company that enter into non-deposit investment products (NDIP) agreements with broker-dealers, or registered persons who own a legal entity that contracts with a broker-dealer.

7. **Immediate family members' personal securities transactions not in scope**

Finally, given how the text of the proposed rule is structured and the specific words used, e.g., "shall," questions have been raised whether the rule has been expanded unintentionally to include notification of immediate family members' own personal securities transactions without the participation of the associated person. For instance, whether simply by way of the relationship, the required elements of participation and a beneficial interest are imputed to the associated person. Our position is that absent participation in the private securities transaction and receipt of selling compensation, an associated person is not required to provide notification to their firm of their immediate family members' own private securities transactions under proposed Rule 3290, as is the case under Rule 3280. We do not believe FINRA intended this result, given its statements, but would be happy to discuss it further for the avoidance of doubt.[9]

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SIFMA appreciates your consideration of our comments and would be pleased to discuss them in detail and answer any questions you may have.

Sincerely,

Bernard V. Canepa

Bernard V. Canepa
Managing Director and Associate General Counsel

[8] *Supra* note 2 at p. 12.

[9] *Id.* at p. 6 and *supra* note 4.