In response to FINRA's Notice 17-20 seeking comment on Rules 3270 (Outside Business Activities of Registered Persons) and
3280 (Private Securities Transactions of an Associated Person), I offer the following. As a consultant to small FINRA member firms for the last 17 years, I have had exposure to these Rules and their predecessors and believe that my highly summarized input may be helpful.

3270: When attempting to comply with the Rule and with published guidance, several issues come up frequently, such as: the discrepancy between U4 "Other Business" reporting requirements and those under Rule 3270; and whether certain types of activities are "OBA," such as renting out a personal home or other personally-owned property or acting as unpaid board member. Uniformity of the Rule and U4 disclosure requirements (for instance, to align requirements for non-compensated activities) would be an improvement, as would extreme clarity on which activities FINRA considers to be "OBA." In addition, I believe that firms should be permitted to rely on their own analyses of conflicts when deciding whether to allow or restrict personnel's activities, rather than adhere to some unreasonable standard irregularly imposed by examiners.

3280: First and foremost, I believe that FINRA should make perfectly clear its expectations regarding application of this Rule to associated persons' personal investments (private securities transactions, or "PSTs"). The Rule appears to require compliance in the case of such investments that do not show up on brokerage statements (and therefore would be subject to review under Rules 3110 and 3210); however, from what I have witnessed, examiners do not test for compliance uniformly. For instance, in recent routine examinations, different firms have been held to different definitions of PST: some firms are asked to produce records only for what is called "selling away" activity, whereby APs transact in securities transactions for third parties. I believe it is unfair for some firms to have meet the burden of 3280 requirements for its personnel's private investments, while other firms are free of this burden. In fact, sometimes it all comes down to how a member firm answers the question, "Have any of your associated persons engaged in private securities transactions under Rule 3280?"—those that answer "No" based on the assumption that only "selling away" qualifies as "private securities transactions" are off the hook. The conscientious and informed member firm pays the higher price.

Also on 3280, I have seen examination findings in public records that cited a deficiency for a private investment made through an operating company the RR had established. I am concerned that this broad application of the Rule to down-stream investments could balloon into enormous compliance obligations.

Lastly on 3280, I repeat my 3270 comment above about a firm's analysis. Firms should be permitted to apply their own risk-based review of proposed PSTs. For small firms, which are typically owned and operated by registered principals, this analysis most likely is conducted by an informed party who has the firm's best interests at heart and who is familiar with the character of the firm's APs and the nature of their activities. Trust is an essential part of the broker-dealer business and firms should be allowed to establish and rely on that trust in their compliance efforts. In some cases, firms have been questioned on whether their review of a non-selling away PST was detailed enough—for instance, whether sub-investments of investments in privately-managed funds were disclosed and analyzed under 3280. In my opinion, a firm should have discretion under the Rule to apply a higher degree of investigation based on the facts and circumstances, which include the profile of the investing AP. In cases where small firm owners

and senior management are making the PSTs, I believe they should be allowed to apply a risk-based methodology that reflects the philosophy underlying Rule 3110.10, which in essence allows for greater trust in a member firm's senior executive officers. In essence, absent red flags, a firm should be trusted to decide what represents a conflict, and regulators (specifically, examiners) should not be permitted to impose definitions, review methodologies or documentary requirements that do not exist under the Rule.

Thank you and I hope this input will be helpful.

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