April 27, 2018

Exclusively via email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 18-08 - FINRA Requests Comment on New Proposed Rule Governing Outside Business Activities and Private Securities Transactions

Dear Ms. Mitchell:

1st Global ("the Firm") submits this letter to the Financial Industry Regulatory Authority, Inc ("FINRA") in response to FINRA's request for comment set forth in Regulatory Notice 18-08 ("18-08") regarding the new proposed rule governing outside business activities and private securities transactions. 1st Global appreciates the opportunity to respond to this Regulatory Notice.

1st Global is a dually registered firm (BD/IA) which was founded in 1992. Through our network of affiliated professionals, we offer comprehensive financial services to individuals and businesses. We specialize in partnering with CPA, Tax, Accounting, and Legal professionals who wish to provide financial services to their clients.

Form U4 Disclosure

As a preliminary matter, the Firm noted that FINRA did not specifically address in 18-08 whether or not the proposed rule change will institute a change in the wording for the outside business activity ("OBA") question in the Form U4. Currently, the Form U4 question reads as follows:

> "Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.)"

In the proposed Supplementary Material, FINRA provides a different description of outside business activity than what is asked on the Form U4:

> (b) "Business activity" means: (i) acting as an employee, independent contractor, sole proprietor, officer, director or partner of another person; or (ii) receiving compensation, or having the reasonable expectation of compensation, from any other person as a result of the activity.

FINRA's proposed definition eliminates "trustee, agent or otherwise" as well as the "charitable, etc." exclusion, and adds "independent contractor" and includes an alternative determination based on compensation (which is currently included in 3270).

It is our understanding, as stated on NASAA's website, that the Form U4 (among other forms) is "amended from time to time and these amendments are drafted by the users of the forms: SEC, FINRA, NASAA, States & ARM (Industry). These amendments to the uniform forms are adopted through a public process including the promulgation of a public notice and an opportunity to comment."

We are hopeful that if FINRA adopts its proposed rule, that the other parties involved (SEC, NASAA, and the State regulators) will agree to amend the OBA question on the U4 to mirror the requirements under the new proposed rule. If the question on the Form U4 is not changed, challenges will be created for broker/dealers in reconciling the requirements under the FINRA rule vs. the disclosure obligation described on the U4, as they are different. As just one example, if a RR is engaged as a trustee for a trust but does not earn compensation, this activity would be excluded under the new FINRA definition but it would still be reportable and required to be disclosed on the U4 due to the wording of the Form U4 OBA question which includes "trustee", regardless of compensation. Similarly, the use of the words "or otherwise" on the Form U4 is so broad that a firm could be held to a broader disclosure standard by the Form U4 than by the definition under the proposed rule.

Additionally, if the Form U4 OBA question and the new rule are not aligned, there could potentially be investor harm because what the investor thinks is required to be disclosed based on the Form U4 question would not actually be the case under the rule.

Beyond the basic issue of alignment of the U4 question and the new proposed rule, we believe there is an opportunity for the regulatory regime to align the purpose of the new proposed rule (which is to focus resources on the review of investment-related activities) with the intent of the U4 OBA disclosure to the investing public (which is to make investors aware of potential conflicts-of-interest and other activities which are material to their decision to utilize a RR's services, and to provide clarity as to whether the services are offered by the member). The disclosure of non-investment related outside activities on the U4 provides no real benefit to the investing public in evaluating the risks associated with a particular registered representative. The Firm believes the U4 disclosure requirement should be amended to only require disclosure of investment-related activities which could interfere with or otherwise compromise the registered person's responsibilities to the member's customers and/or which could be viewed by customers or the public as part of the member's business, or in the alternative, limit the disclosure requirement to include all investment-related activities only regardless of the results of the firm's analysis of the activity.

Eliminating the U4 disclosure requirement for non-investment related activities (which are immaterial to the investing public's decision to work with a RR), allows greater focus and exposure of those activities which are material. There are many RRs that have 5, 10, 15 or more activities which are currently required to be disclosed, but only a select few of those may be material to an investor. Listing all of these on the Form U4 distracts the investors from the outside activities which are truly material to them. In addition, the amount of internal compliance/regulatory/licensing resources used by firms to manage the public disclosure of all investment and non-investment related activities is substantial. Elimination of the requirement to disclose non-investment related activities on the U4 would reduce the resources used by firms as well as FINRA in this area, while maintaining the same level of regulatory oversight

due to the fact that the proposed rule still requires firms to maintain records of these non-investment related activities.

Furthermore, if the Form U4 question will continue to require the disclosure of non-investment related OBAs, then there will not be a reduction in the resources needed to file and maintain U4 OBA disclosures to the extent that FINRA and the industry would hope for. For example, if a RR is an Uber driver, while the proposed new rule would only require prior written notice, the RR's firm will still be required to obtain all of the information required on the Form U4 (address, start date, position, title, number of hours, description, etc.) and will be required to file this in a timely manner on the U4. The only real difference between the old and new rule with regard to prior notice activities would be the fact that the new rule would eliminate the analysis requirement (since the activity is non-investment related). However, non-investment related activities such as an Uber driver, there's not any significant amount of resources in conducting that analysis in the first place, so the proposed new rule will have limited positive effect in that regard.

The following is the firm's responses to the specific questions FINRA posed in 18-08:

1. *What are the alternative approaches, other than the proposal, that FINRA should consider?*

   The firm does not believe that there is an alternative approach which FINRA should consider. Regarding a "principles-based" approach, we believe that such an approach would remove the specificity and a general uniformity in the interpretation of what constitutes an outside business activity, and would lead to inconsistency between firms and cause issues when RRs transfer to another firm where the OBA disclosure principles are interpreted much differently. The Firm feels that a principles-based approach would potentially cause investor harm as not all firms will feel obligated to report OBAs.

2. *How would consolidation of the rules governing outside business activities and private securities transactions in this proposal simplify compliance? What impact would it have on the cost of compliance?*

   As stated above, we do not believe that the rule will significantly simplify compliance unless the U4 disclosure requirement is amended. Firms will still be required to collect all of the required data points related to the OBA question on the Form U4, and will be required to report these activities on the U4 even where the activity is determined to be non-investment related. The collection of these data points and the resources used to disclose and maintain the disclosures of these activities on the Form U4 is not lessened unless the Form U4 disclosure requirement is amended.

3. *Unlike Rule 3280, the proposed rule would apply to RRs, rather than to associated persons. Should the proposed rule be expanded to apply to all associated persons? If so, why?*

   The Firm does not believe that the proposed rule should apply to all associated persons, as those persons generally pose a much lower risk than RRs. Firms are in a better position to decide for

its own business reasons whether to create additional obligations and procedures for its associated persons regarding outside business activities than for FINRA to create a blanket rule covering associated persons.

4. *Is the proposed scope of the notice requirement appropriately tailored to balance the interest of members to receive information regarding their RRs' outside activities and any investor protection concerns?*

    a. *Should the proposal be modified to require RRs to provide notice with respect to a narrower set of activities? If so, should notice be required only with respect to investment-related or some other categorization of activities?*

    No. By requiring the prior written notice of non-investment related activities, the proposed rule affords firms the opportunity to review all activities and determine whether or not the activity is actually investment-related. Some activities will fall into a grey area where it is better for the firm to make the determination than to rely on the individual who is proposing to engage in the activity.

    b. *Would narrowing the scope of the proposal impose any additional risks to investors?*

    Potentially. Please refer to our response in 4.a. The Firm would like to reiterate our comment that the disclosure on the Form U4 should be narrowed, and can be done in such a way as to not impose any additional risks to investors.

5. *A member's obligation to conduct a risk assessment is only triggered under the proposal with respect to investment-related activities.*

    a. *Does limiting the required risk assessment to activities that are "investment related" properly balance the interest of allowing members to focus compliance efforts on activities that pose the greatest concerns and any potential harm to investors?*

    Yes, to a certain extent. Please keep in mind that many non-investment related activities do not require much effort to make the determination as to whether or not the activity may pose any potential harm to investors. Generally, a Series 24 individual who reviews OBAs is naturally predisposed to asking the conflict question to themselves even if such a requirement is not in the rule, and so this change does not substantially reduce the real-world review process.

    b. *Is the definition of "investment-related," which is based on the definition used by the Form U4, appropriate given the regulatory objectives of the proposal, or should other activities be included in or excluded from the definition? If so, why?*

    The Firm agrees that FINRA should utilize the Form U4 definition.

c. *The proposed rule's focus is on assessing the risks created by the RR's engagement in the outside investment-related activity, rather than the underlying activity itself. Is this an appropriate focus? Should the risk assessment include a requirement for the member to perform due diligence of the underlying outside activity?*

In many cases, our Firm would continue to perform due diligence of the underlying outside activity as it would be an important factor as to whether the RR's engagement in the activity presents risk to the Firm. In many cases, we do not see how the two can be separated, but do not believe that it should be a requirement of the rule.

d. *The member would be required in the risk assessment to evaluate whether the proposed activity will: (i) interfere with or otherwise compromise the RR's responsibilities to the member's customers; or (ii) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Are these appropriate criteria to evaluate conflicts of interests and other potential areas of harm to investors?*

Yes, the Firm agrees with the continued use of the above-listed criteria.

6. *The proposal has several exclusions, including for RRs' personal investments and activities conducted on behalf of an affiliate of a member, unless those activities would require registration as a broker or dealer if not for the person's association with a member. Are the proposed exclusions appropriate?*

a. *Should any other activities be excluded from the rule? If so, why?*

The Firm believes that the exclusion of these activities is appropriate. The Firm would seek clarification as to whether a RR's passive investment in an LLC would be considered a personal investment excluded from disclosure requirements. If this is the case, this could create risk to members as they will not be made aware of these activities, whereas if they were aware they could review emails, etc. to ensure the RR is not also soliciting clients for this outside investment.

b. *Should the proposed exclusions, including the exclusion for activities on behalf of affiliates, be limited in any manner? For example, should the exclusion be limited to activities on behalf of affiliates that are subject to federal or state financial registration or licensing requirements, such as registered investment advisers, banks and insurance companies?*

No. The Firm agrees with FINRA's assertion that firms will have internal processes which are reasonably designed to supervise the affiliated activities.

7. *Unlike current Rule 3280 and related guidance, the proposed rule would not impose a general supervisory obligation over IA activities and would not require the member to record on its books and records transactions resulting from such IA activities. Does the treatment of IA activities under the proposed rule appropriately address investor protection concerns while recognizing that separate obligations exist under the IA regulatory regime?*

   IA activities are regulated at the Federal or State level, and therefore we agree with FINRA's assessment that certain elements of supervision could be duplicative. That said, Independent IAs are unfortunately a common place where RRs seek to engage in investment transactions away from their member firm. Moving away from the historic requirement to involve BDs in supervision in securities transactions in which their Independent RIA/RRs are involved in the execution of such transactions to a scenario where that supervision becomes entirely discretionary on the part of the BD will certainly result in most BDs uniformly disclaiming any supervisory obligation at all for such activities. If FINRA's desire in this regard is to provide a FINRA safe harbor for such disclaiming BDs, that desire will certainly be realized. If, however, your intent is to maintain some level of BD supervisory obligations over such activities even for BD's that disclaim any supervisory role in their approval of the independent RIA activities of their RRs, please clearly articulate that fact in the adopting release. In other words, our Firm would like FINRA to clearly articulate what obligations, if any, it believes a BD would have to investors of an independent RIA operated by one of its RRs where the BD through its OBA process has disclaimed any involvement in the supervision of such transactions.

8. *Under paragraph (b)(4), if a member approves a person's participation in a proposed activity that would require, if not for the person's association with a member, registration as a broker or dealer under the Exchange Act, the activity is deemed to be the member's business and the member must supervise accordingly.*

   a. *Is registration under the Exchange Act the appropriate trigger for this provision?*

      Yes, but please see our comment below regarding 8.b.

   b. *Should paragraph (b)(4) be expanded to require a member to supervise a RR's sale of securities through an entity that is not required to register under the Exchange Act?*

      Yes. For example, if the RR is engaging in the sale of a security that is part of an intrastate offering and is overseen only at the State level, and not the Federal level, we believe that FINRA would expect the firm to supervise this activity and that FINRA is unintentionally creating a loophole by its use of the Exchange Act as the sole trigger.

   c. *When the RR is associated with more than one member, the proposed rule allows members to develop a formal allocation arrangement whereby at least one member has the regulatory responsibility, including the supervision and recordkeeping of the proposed outside business activity. Are there any competitive effects of such allocation*

arrangements? Does this flexibility potentially create a disadvantage for some firms regarding how the costs are allocated? Should FINRA consider any other approaches?

Our Firm has no comment on this particular proposal, as we do not allow our RRs to be registered with another member firm.

9. *Are there any material economic impacts, including costs and benefits, to investors, issuers and firms that are associated specifically with the proposal? If so:*

   a. *What are these economic impacts and what are their primary sources?*

   The Firm does not believe that there will be any material economic impacts to investors. There will be an increased cost to Firms on the front-end, given the need for firms to conduct an impact analysis, revise WSPs, communicate and education RRs, and amend internal forms and systems. Over the long-term, the Firm does not believe that there will be a significant reduction in the amount of resources needed to report or review the activities, or a reduction in the amount of time spent overseeing activities, including those that were conditionally approved. This is because it appears that firms will continue to have to collect all the data points for the U4 for non-investment related activities and utilize resources to disclose and manage the U4 disclosures. Non-investment related activities do not require a significant amount of resources to review under the current rule, and so there will not be a significant reduction in resources due to the proposed rule.

   b. *To what extent would these economic impacts differ by business attributes, such as size of firm or differences in business models?*

   Wirehouse firms typically restrict RRs as to what OBAs they can engage in (if they allow any at all), as the individual's activity as a RR is their primary responsibility. In the independent contractor world, RRs are typically involved in more OBAs, and thus any change in the rule would appear to lessen the burden for independent contractor firms. That said, the independent contractor firms will expend considerably more resources in reviewing their policies, communicating changes, training RRs, and adjusting disclosure forms and databases to comply with the new proposed rule on the front-end.

   c. *What would be the magnitude of these impacts, including costs and benefits?*

   Upon implementation of the new rule, all Firms would be required to some extent to revise their disclosure forms (hard copy and/or electronic), amend their WSPs, and provide appropriate education and training to RRs regarding the new rules. Done properly, this requires a substantial amount of resources. Our Firm will expend approximately 40 hours in analyzing the new rule and its impact on our current processes and WSPs; approximately 20 hours in amending our electronic disclosure forms and database structure; approximately 80 hours creating, presenting and distributing training materials along with answering questions from our RRs; and approximately several

hundred hours across our RR base along with our compliance and licensing departments to review current activities, and adjust our internal records and Form U4 disclosures, where necessary.

10. *Are there any expected economic impacts associated with the proposal not discussed in this Notice? What are they and what are the estimates of those impacts?*

    Please see the Firm's response to 9.c. above.

Again, 1st Global appreciates the opportunity to comment on Regulatory Notice 18-08. We would be pleased to discuss any of these points further and to provide additional information you believe would be helpful.

Sincerely,

Adam Schaub, AVP
Chief Compliance Officer
1st Global Capital Corp.