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April 17, 2018

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

Re: Outside Business Activities
FINRA Notice 18-08

Dear Ms. Mitchell:

The Investment Company Institute¹ is writing in response to FINRA's request for comment on its proposed rewrite of Rule 3270, which governs the outside business activities of a member's registered representatives.² The Institute supports adoption of the revised rule. We recommend, however, that FINRA clarify how the revised rule will apply to those activities of a mutual fund underwriter's registered representative when the representative's outside business activity involves a mutual fund that is related to the underwriter but is not an affiliate of it.

FINRA has long regulated the outside business activities of members' registered representatives because of the risk they present to the member and the investing public. In particular, a registered representative's outside activities could be unknown to the member and yet be perceived by the investing public to be part of the member's business. To address this concern, FINRA's rules require registered representatives to inform the member in writing of his or her outside activities.

¹ The Investment Company Institute is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, and 529 plans in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of \$22.5 trillion in the United States, serving more than 100 million US shareholders.

² See *Outside Business Activities*, FINRA Regulatory Notice 18-08 (February 26, 2018) (the "FINRA's Notice").

Last year, FINRA began a retrospective review of its current rule governing outside business activities. According to FINRA's Notice, this review confirmed the importance of FINRA having a rule in this area. It also revealed that the current rule could benefit from changes to better align FINRA's investor protection goals with the current regulatory landscape and business practices. In response to these findings, FINRA is now proposing amendments to Rule 3270. These amendments are intended to clarify registered representatives' obligations relating to their outside business activities and reduce unnecessary burdens associated with those outside activities that do not pose a risk to the member or investing public. FINRA's proposal accomplishes this, in part, by expressly exempting a broader range of registered representatives' activities from the written notice required by the current rule so the member can focus its efforts on those activities that are most likely to raise investor protection concerns. The Institute commends FINRA for conducting its retrospective review of Rule 3270. We also commend it for proposing to limit the rule's scope to those outside business activities that may be more problematic and warrant closer review by the member. Accordingly, we support adoption of the proposed amendments to Rule 3270.

We recommend, however, that FINRA clarify an issue relating to an outside business activity that we believe should fall within the scope of the rule's exclusions in Supplementary Material .01. As currently proposed, this Supplementary Material will exclude from the rule a registered representative's activities that are "conducted on behalf of a member's affiliate." The term "affiliate" is defined to mean "an entity that controls, is controlled by, or is under common control with a member." We support this exclusion and concur with FINRA that it is appropriate to exclude from the rule's scope a registered representative's outside business activities involving the member's affiliate.

We are concerned, however, that, as drafted, this exclusion may not cover outside business activities within a mutual fund complex. Within a mutual fund complex, it is not uncommon for a registered representative of the fund's principal underwriter to serve as an officer or director of a fund that is *related* to the underwriter but is not an *affiliate* of the underwriter as the term is defined in the Supplementary Material. Because the current exclusion is conditioned on the outside business activity involving a member's "affiliate," it is not clear to us how this exclusion would operate in the mutual fund context. This is true even though permitting its use in such limited circumstance seems entirely consistent with the intent behind the proposed exclusion for activities involving affiliates. Indeed, but for the technicalities of these relationships within a mutual fund complex and the rule's definition of "affiliate," the underwriter's registered representatives would qualify for the proposed exclusion.

Accordingly, we recommend that FINRA address this issue by clarifying that the rule will not apply to a registered person of a mutual fund underwriter who serves as an officer or director of a registered investment company where the member or an affiliate of the member serves as investment adviser, administrator, or principal underwriter of the registered investment company without regard to whether the registered investment company is an affiliate of the member. We additionally recommend that FINRA provide this clarification either in the Supplementary Material or in a notice providing guidance regarding the rule's application.

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We believe that this clarification is consistent with FINRA's interest in revising the rule to reduce unnecessary burdens on its members regarding their registered representatives' activities without lessening any investor protections. We appreciate FINRA's consideration of this request. If you have any questions regarding it or would like additional information about it, please do not hesitate to contact me by phone (202-326-5825) or email (tamara@ici.org).

Regards,

/S/

Tamara K. Salmon

Associate General Counsel