

April 27, 2018

By Electronic Mail to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 18-08:
Raymond James Financial, Inc. Comment on Proposed New Rule Governing Outside
Business Activities of Registered Persons**

Dear Ms. Mitchell:

Raymond James Financial, Inc. (“Raymond James”)¹ appreciates the opportunity to respond to FINRA’s request for comment issued in Regulatory Notice 18-08 regarding FINRA’s proposal to consolidate current FINRA Rules 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person) into proposed FINRA Rule 3290 (Outside Business Activities).

Raymond James recognizes and appreciates the challenge associated with simultaneously strengthening investor protections while reducing member firms’ unnecessary burdens associated with supervising outside business activities. After thoughtfully considering FINRA’s rule proposal, Raymond James aligns closely with the Securities Industry and Financial Markets Association (“SIFMA”) supporting FINRA’s efforts to consolidate FINRA Rules 3270 and 3280 into a single rule governing outside business activities of registered persons and concurs with SIFMA’s suggestions and analyses included with its comment letter.

Raymond James supports focusing resources on assessing and supervising a more streamlined set of registered persons’ outside activities, particularly the investment-related outside activities which includes investment advisory activities. Therefore, Raymond James strongly encourages FINRA to preserve the supervisory and recordkeeping obligations for registered persons’ underlying investment advisory activities on behalf of unaffiliated entities—as currently reflected in FINRA Rule 3280—because such activities are exactly the type of outside business activities that potentially raise investor-protection concerns. Continuing the supervisory and

¹ On behalf of its wholly owned broker-dealer subsidiaries Raymond James & Associates, Inc. (“RJA”) and Raymond James Financial Services, Inc. (“RJFS”), each registered with the Financial Industry Regulatory Authority (“FINRA”) and the Securities and Exchange Commission (“SEC”).

recordkeeping obligations is necessary to detect and address gross misconduct, and identify conflicts of interest—all potentially harmful to investors.

Raymond James agrees with FINRA that modifications to the current approach under FINRA Rule 3280 are appropriate, especially with respect to narrowing the scope to registered persons' investment related activities and excluding investment-related activities of member firms' non-registered associates. Raymond James also agrees that the combination of FINRA Rules 3270 and 3280 into proposed FINRA Rule 3290 appropriately clarifies that investment-related activities, such as investment advisory activities on behalf of unaffiliated entities, constitute outside business activities subject to a risk assessment and the need for a consistent framework. However, Raymond James recommends FINRA consider adding the obligations of supervision and recordkeeping to member firms, specifically with respect to investment advisory activities of registered persons on behalf of unaffiliated entities. By adopting the supervisory and recordkeeping obligations from FINRA 3280 into proposed FINRA Rule 3290, the proposed rule will maintain a clear, streamlined, framework for outside business activities.

Raymond James currently permits its independent contractor registered persons to conduct investment advisory activities under an independent Registered Investment Advisory (“RIA”) firm. Absent a requirement that member firms supervise their registered persons' investment advisory activities on behalf of an independent RIA, investors would potentially risk registered persons favoring delivering investment advice and recommendations—or, worse, engaging in potentially inappropriate activities—under the less-regulated and less-supervised entity. The risk of confusion for investors regarding the applicable standards increase substantially if the registered person is also an investment advisor representative of an unsupervised independent RIA.

Additionally, registered persons' investment advisory activities on behalf of an independent RIA is a clear example of an investment-related activity that may be viewed by investors as part of the member firm's business. Consequently, such activities require heightened scrutiny beyond the proposed risk assessment and discretionary imposition of conditions or restrictions described in the proposed rule. Raymond James recommends that supervision and recordkeeping obligations remain for registered persons engaging in investment advisory activities on behalf of unaffiliated entities because assessing the associated risks and approving the activities would be difficult to require absent the supervisory obligation. Making supervisory and recordkeeping obligations for such activities mandatory, with express language in proposed Rule 3290, would remove ambiguity regarding the appropriate conditions, restrictions, or controls associated with unaffiliated investment advisory activities. The risk assessment requirement alone is insufficient to protect investors from potentially harmful conflicts of interest, misconduct, and poorly designed and executed investment strategies.

Removing member firms' supervisory and recordkeeping obligations for investment-related activities of dually registered persons seems inconsistent with FINRA's objective to strengthen investor protections. Raymond James agrees with SIFMA's position that despite clear separation of regulatory regimes between FINRA and the SEC, that division blurs when a member firm's registered persons are delivering broker-dealer and investment advisory services for the same investors. Raymond James encourages FINRA to consider that the division between the two regulatory schemes does not relieve member firms of the duty to diligently oversee all investment-

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related activities performed by their registered persons. Registered persons performing investment advisory activities while operating under an unaffiliated entity poses potential risks to member firms' investor clients and should be supervised accordingly.

Finally, Raymond James supports SIFMA's request for specific guidance with respect to member firms' registered persons who are also investment adviser representatives of *affiliated* or *unaffiliated* RIAs ("hybrid advisers") in the areas of marketing materials, e-mail surveillance, and FINRA Rule 8210 authority. Without guidance on member firms' obligations in connection with hybrid advisers' activities, continued confusion and ambiguity will remain regarding member firms' regulatory obligations.

Raymond James appreciates the opportunity to respond to FINRA's request for comments to Regulatory Notice 18-08 and reiterates its support for consolidating and streamlining the rules governing registered and non-registered persons' outside business activities. Feedback and comments provided in this letter are intended to assist FINRA's efforts to develop a combined rule that reduces member firms' unnecessary supervisory and compliance burdens, while strengthening investor protections.

We look forward to a continuing dialogue with FINRA representatives. Please contact me at (727) 567-7904 with questions or for additional information.

Sincerely,

