

April 24, 2018

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

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

Dear Ms. Mitchell:

I appreciate the opportunity to comment on the proposed rule referenced above.

Rule 3270 and 3280 have long been a source of frustration for small firms. The lack of clarity around the PST rule (buying away vs. selling away) and the widely regarded overreach of the OBA rule have disproportionately created ongoing confusion and unintentional, administrative (i.e., not customer-harm related) rule violations for small firms. When the subject of OBAs and PSTs finds its way onto every FINRA conference agenda for as many years as I can remember, it is clear the rules are outdated, unclear, and in dire need of amending.

Clarification of the difference between “buying away” and “selling away” provides much needed and important risk-based protections for both the investing public and member firms; I support this effort.

The proposed rule also addresses the growing area of independent investment advisory (IA) activities of an associated person through an unaffiliated entity and appropriately exempts those regulated (by the SEC) activities from the OBA rule. Investment advisors are regulated by the SEC, not FINRA, so the regulatory requirement to supervise SEC-related IA business on the FINRA side has never made sense to most of us; we welcome with open arms the current rule amendment proposal. Regulatory redundancy should be avoided at all costs as it provides no benefit to the investing public and causes harm to small businesses by creating additional, costly compliance burdens. I believe the removal of this problematic redundancy will result in member firms’ being able to focus their resources in areas under their direct control and leave the regulators in direct control of their appropriate regulatory responsibilities and constituents. I support this effort.

I agree with my colleague, Lisa Roth, on the following:

Applying the proposed rule to registered persons is a meaningful step to reconciling the prior rules and is a reasonable approach. But because of the compliance and operational controls that necessarily involve nonregistered personnel, such as privacy and cyber security, it can be expected that member firms may expand the scope to include non-registered associated persons. FINRA should provide additional guidance to firms to identify areas that it (or its examiners) will consider to be important considerations so that member firms can best implement their appropriate internal controls. Further, in

view of the impending SIE registrations, FINRA should also provide guidance for SIE registrants not otherwise affiliated with a member firm to prevent improper selling away and other potential violations.

By focusing the requirement for a risk assessment on the role of the registered person, FINRA appropriately captures the highest potential for risk. However, limiting the risk assessment to the individual may prevent the member firm's ability to detect improper activity. For instance, if a firm were to determine that a registered person was involved in an administrative capacity with an unaffiliated employer, but did not fully understand that clients of the member firm were investors/prospective investors/control persons of the employer the member firm may not have adequate information to assess the risk of the OBA. Member firms will likely find appropriate means to overcome risk of this nature, but FINRA's guidance and further consideration would be meaningful.

In closing, I would like to thank FINRA for the extensive work they have done in their retrospective review of these rules and for the proposed rule amendment offered for comment. For small firms' sake, I hope that these amendments pass substantially as proposed.

Best regards,  
Paige W. Pierce