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June 29, 2017

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

**RE: Regulatory Notice 17-20 Comment on the Effectiveness and Efficiency of
Its Rules on Outside Business Activities and Private Securities Transactions**

Dear Ms. Piorko Mitchell:

This comment letter is submitted on behalf of National Regulatory Services (“NRS”), the nation’s leading compliance consulting, technology, and education firm founded in Lakeville, Connecticut in 1983. NRS provides compliance and consulting services, compliance technology solutions, national conferences, seminars and the NRS Certified Compliance Professional certificate program to approximately 6,000 broker-dealers, investment advisers, and investment companies ranging from small institutions to the largest global investment management complexes, private fund managers as well as other financial firms. NRS created and is the co-sponsor, along with the Investment Adviser Association (“IAA”), the Investment Adviser Certified Compliance Professional (“IA-CCP”) certificate program. NRS and the IAA, for the past fifteen years have been the authors of the annual report - *Evolution Revolution, A Profile of the Investment Adviser Profession*.

NRS is a division of Accuity, the leading provider of global payment routing data, AML screening software, and services that allow organizations, across multiple industries, to maximize efficiency and facilitate compliance of their transactions. For more than 150 years, Accuity has provided its worldwide clients, including banks, corporations and government organizations located in over 150 countries, with solutions and services packaged in multiple formats to serve their diverse needs.

Regulatory Notice 17-20 (the “Notice”) requests comment on the effectiveness and efficiency of FINRA Rule 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person). As mentioned in the Notice, “these rules govern firm employees’ business and securities activities carried out away from their firm – activities that are outside the regular course or scope of their employment with the firm.”

NRS commends FINRA for conducting this retrospective rules review to ensure they remain reasonably designed to achieve their objectives in an effective and efficient manner. NRS recognizes the importance of protecting the investing public as well as member firm’s from the risks posed by firm personnel engaging in activities outside their regular course or scope of employment. NRS greatly appreciates the opportunity to comment on the Notice questions in the spirit of evaluating their intended goal of protecting the investing public and maintaining the integrity and reputation of our industry and its members. Following a brief introductory statement, our comments are provided in the order presented in the Notice.

Comments

NRS agrees with FINRA that rules need to be effective, efficient and reasonable in order for firms to operate in a compliant manner and continue to identify problematic or risky activities of the firm and its employees in order to better protect investors. As FINRA has acknowledged in the Notice, it is appropriate over time for rules to be reviewed in hindsight to remain relevant, consistent, and up-to-date. It is our view that the rules are not as effective or efficient as they could be given our experience with member interpretations and implementation of policies and procedures to meet the requirements of the rule. The challenge facing members and their employees is the variance in interpretation of certain elements within the rules that can lead to inconsistencies in how they are applied.

FINRA, through this Notice, is seeking answers to the following questions with respect to Rules 3270 and 3280:

- 1. Have the rules effectively addressed the problem(s) they were intended to mitigate?**

We do not believe the rules address the risks they were intended to mitigate in the most efficient or effective manner. It is our opinion that this is due, primarily, to various interpretations by members of the terminology contained within the rule and variances in the members’ business practices. Our comments to the questions below will provide more insight into our opinion.

To what extent have the original purposes of and need for the rules been affected by subsequent changes to the markets, the delivery of financial services, the applicable regulatory framework, or other considerations?

We are seeing a number of developments in this area. First, holistic financial services, in other words the ability to provide financial planning, insurance, advisory, and brokerage services, to a customer/client in a one-stop shop can be appealing in the marketplace, especially in rural areas, or where there exists a strong professional relationship. This often creates supervisory overlap, redundant reporting, and in some cases conflicting processes. Secondly, employee's financial situations vary and in some cases, the pursuit of outside hobbies can also lead to notification under the rule. An employee who helps a spouse with a weekend catering business or an employee who scuba dives and runs occasional dive trips to fund his hobby could require notification under the rule. Finally, the rules themselves present inconsistency that can lead to misinterpretation. For example, 3270 requires prior written notice without a mandatory approval or disapproval, whereas 3280 requires prior written notice for a firm to either approve or disapprove. 3270 involves registered persons, whereas 3280 involves associated persons. The developments in the marketplace, personal life activities, and variances in each rules' application has increased the complexity in administering and supervising the rules intentions.

Are there alternative ways to achieve the goals of the rules that should be considered?

NRS appreciates the challenge associated with developing rules that protect the public and preserve the reputation and integrity of our industry and its members while not imposing undue burden on its members in pursuit of those goals. We do not feel that there is a need to develop alternative ways to address the risks associated with outside activities and private security transactions. However, we do feel that clarifications in the existing rules would provide members with the ability to more effectively meet their goals.

2. What have been experiences with implementation of the rule set, including any ambiguities in the rules or challenges to comply with them?

As mentioned in the response to the first set of questions, the ambiguity of certain terms has led to various interpretations regarding the conditions that create notification requirements under the rule. Under Rule 3270, the term "passive investments" is not defined but is included as an exemption to the rule and "compensation" is also not defined. This can lead to different interpretations by each member and its representatives. For example, some member firms interpret "compensation" to include a non-monetary gift for an employee's participation as a particular association's board member while other firms would not consider it compensation. Under Rule 3280 the definition of "private securities transaction" is broadly worded which can lead to uncertainty in its application. In addition, the definition of "selling compensation" includes the catch all "including, but not limited to" which leaves interpretation to the members and their associated persons. For

example, if a person who formed a limited liability company has others buy an interest in the company, with no commission or finder's fee involved and only a stock certificate provided to the purchaser, would the "indirect" compensation be interpreted as selling compensation? NRS would suggest further clarification on the application of the term. NRS would also suggest that FINRA review the results of its examinations of members and their associated persons that included supervisory deficiencies due to an inaccurate determination of an outside business activity when it should have been classified as a personal security transaction and vice versa. Such a review, may indicate that further clarity is needed within the rule to improve its application among members.

3. What have been the economic impacts, including costs and benefits, arising from FINRA's rules?

It has been our experience that the impacts, costs, and benefits attributable to the rules varies depending on size of firm and type of member. In general, supervisory and reporting activities and costs are much higher for smaller firms given their limitations on resources. We do find many firms utilizing technology to aid in reporting activities, however, that does not solve the issues identified above regarding interpretation of the terms used in the rules

Have the economic impacts been in line with expectations described in the rulemaking?

NRS does not track specific data related to the economic impact and expectations of the rule and is providing general observations based on various members' activities. The rules do not make clear the ongoing supervisory expectations of activities or transactions. For example, once an OBA notice has been received and conditions have been determined for an activity, there is little guidance in the rule for ongoing supervision. Likewise, there is little guidance in the rule for ongoing supervision of a private security transaction once it has been approved or denied. However, supervisory activities are taken into consideration when there has been a violation of the rule. Members are able to provide policies, procedures, reporting, questionnaires, office audits, and other surveillance mechanisms. However, the practice is largely dependent on the registered or associated person providing transparent notice. The economic impact for a failure to adequately provide notice should be borne by the filer and not its member firm.

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

In general, it is our view, that firms with dually registered employees and firms of smaller size bear a higher economic impact as a result of the rules. In addition, since

OBAs may include non-industry related activities, it presents reporting and supervision challenges that further impacts members regardless of their business model.

4. **Can FINRA make the rules, interpretations or attendant administrative processes more efficient and effective?**

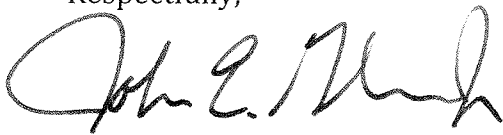
It is our view that FINRA can make the rules more efficient and effective by further clarifying the terminology thereby eliminating confusion and variation in the interpretation and implementation of the rules.

Conclusion

NRS continually interacts with broker-dealers of all sizes through our conferences, seminars and client relationships. While many broker-dealers already have written supervisory procedures in place to comply with the rules, NRS believes the ambiguity of the rules today creates a resource strain on many small and mid-sized firms. NRS appreciates FINRA's efforts in conducting a retrospective review of the rules governing outside business activities and private securities transactions to assess their effectiveness and efficiency and we urge FINRA to consider our comments in the spirit in which they were intended.

NRS appreciates the opportunity to comment on this rule review. If we may assist further or provide additional information or background on our comments, please let me know.

Respectfully,

A handwritten signature in black ink, appearing to read "John E. Gebauer". The signature is fluid and cursive, with the first name "John" being the most prominent.

John Gebauer
President