

# SageTrader

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May 25, 2017

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

Dear Ms. Mitchell:

SageTrader LLC is pleased to comment on Regulatory Notice 17-20 regarding FINRA Rules 3270 and 3280 pertaining to Outside Business Activities and Private Securities Transactions. We are a small firm, with a specialized business serving institutional and wholesale clients. We don't give investment advice or support investment advisors, which is where most potential conflicts arise that these rules primarily address.

In addition, as a small firm, we might rely on part-time employees or consultants who are not salespersons, but who are required to register as Associated Persons, who may have other business activities. This situation creates a relatively greater burden for small firms who may need to devote significant resources to account for OBAs and PSTs beyond the protection that is necessary to prevent harm to customers or the firm.

## **Rule 3270 Outside Business Activities**

While SageTrader generally believes that this rule could work well, the rule leaves open much to interpretation as to the definitions of "business", and "compensation" and needs to be fine tuned to today's business practices.

For example, if an Associated Person drives for Uber, or rents out a room in their home on Airbnb, is that a "business" activity that needs to be reported and approved? Or does an Associated Person who is part-time and decides to own and/or operate a small farm or winery need to report that activity to the firm? If a consultant provides tech services or other services to SageTrader in addition to service provided outside Sage, would that person need to be registered as an Associated Person with Sage and if so would all outside work need to be documented?

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While we believe that the firm should be aware of these activities, we think it is most appropriate to level responsibility towards the firm to monitor the outside activities of their employees or APs without a FINRA mandate for extensive paperwork. Every aspect of the firm's employment practices does not need a regulatory requirement thus making good business planning a legal issue, when the harm to individual investors is low, and the potential harm to the firm needs to be evaluated by the firm itself.

Furthermore, questions about whether a fee received from a government agency, or a non-profit is "compensation", or if as a director of a non-profit that operates a thrift store, the AP has an outside business activity are open to interpretation under the rule.

It would seem more appropriate for the rule to be modified to only apply to firm employees or APs that are engaged with selling to customers, and to narrow the definition of OBAs that need to be reported. The OBAs that need to be reported (or approved) should only be those that involve or potentially directly involve a customer of the firm, or could be considered a part of the firm's business, compete with the firm's business or might potentially represent a significant potential conflict with the APs duties to the firm.

#### **Private Securities Transactions (Rule 3280)**

While the intent of Rule 3280 is honorable in trying to insure that APs of the firm are not selling securities or other financial products outside of the firm's knowledge, the definition of PSTs is so broad as to make it very burdensome for both the firm and its APs.

By requiring notification and approval of any "participation" in a PST, the rule broadly includes many passive investments in a variety of instruments such as limited partnerships, private placement offerings, purchase of equities/debt or private companies where the AP has no involvement in any offering other than as a prospective investor. Furthermore the definition of "selling compensation" is too broad as it includes many of the benefits of the investment itself (rights to acquire securities, i.e. through warrants) such that the rule catches almost every private investment that an AP or employee might make.

The rule needs to be modified to eliminate the reporting requirement for any passive investment that is made where the AP or employee has no involvement in the offering process except as an investor. The compensation definition needs to be narrowed so as not to include any financial benefit that is offered to all subscribers in a PST and limiting "selling compensation" to a financial benefit that is specially given to the AP unrelated to the investment in the PST.

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Thank you for the opportunity to comment on these two rules. We are pleased that FINRA continues to review the efficacy and relevance of its current rules in the industry.

Regards,

A handwritten signature in black ink, appearing to read "Charles Hagner". The signature is fluid and cursive, with a prominent loop at the end.

Charles Hagner  
Chief Compliance Officer