



► April 12, 2018

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

Lisa Roth
630 First Avenue
San Diego, CA 92101
619-283-3500

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.

The rule proposal presents a smart new rule framework that reflects FINRA's consideration of the comments it received in connection with its retrospective review of the outside business activity ("OBA") and private securities transactions ("PST") rules.

The rule proposed provides member firms with much needed clarity regarding OBAs and PSTs. For instance, by clearly differentiating "buying away" from "selling away" the new rule provides for important risk-based investor protections appropriately based on the Exchange Act. Similarly, the new rule's approach to addressing independent IA activities of an associated person through an unaffiliated entity reestablishes the importance of regulatory (not broker-dealer) oversight of these activities. I believe this aspect of the new rule will result in member firms' ability to focus their resources in areas under their direct control, and leave the regulators in direct control of their constituents.

I do not believe the rule will dramatically decrease the cost of compliance. Nonetheless, it is likely that it will result in streamlined and meaningful opportunities for risk-based reviews and therefore greater efficiencies.

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 non-registered 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 summary, I welcome FINRA's fresh approach to these important rules. I invite any questions FINRA may have regarding my comments.

Best regards,

Lisa Roth
President