June 29, 2017

Exclusively via email to pubcom@finra.org

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

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

Dear Ms. Mitchell:

1st Global submits this letter to the Financial Industry Regulatory Authority, Inc. ("FINRA") in response to FINRA's request for comment set forth in Regulatory Notice 17-20 ("RN-17-20") assessing the effectiveness and efficiency of its rules governing outside business activities and private securities transactions. 1st Global appreciates the opportunity to respond to this Regulatory Notice.

1st Global Capital Corp. is a broker/dealer that has been in the industry since 1992. Through our network of affiliated professionals, we offer comprehensive financial services to individuals, businesses, and institutions. We specialize in partnering with CPA, Tax, Accounting, Legal and dedicated Financial Professionals.

1st Global believes the modifications and clarification of the rules detailed below should be considered for increasing the efficiency and effectiveness of FINRA's regulation of outside business activities and we express our viewpoints regarding several aspects of the rule. Our comment letter does not directly address the rule regarding private securities transactions.

Current Framework

FINRA Rule 3270 states the following:

> "No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Passive investments and activities subject to the requirements of Rule 3280 shall be exempted from this requirement."

The Supplementary Material .01 for Rule 3270 states that the member firm, in its review of the written notice of the outside business activity, consider whether the proposed activity will:

1) Interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers; or,
2) Be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered.

Under the current U-4 form, registered representatives must disclose outside business activities as described under Section 13:

> "Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non investment-related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.)"

Current Disclosure Issues

1st Global agrees with FINRA that all outside business activities should be disclosed to the member firm. However, we also feel that under the current framework, there are many activities that must be disclosed on the Form U-4 which realistically should not have to be disclosed and that the disclosure of these certain activities to FINRA provides no real benefit to the investing public in evaluating the risks associated with a particular registered representative. It also becomes arduous for clients to decipher what is an important OBA disclosure and what is not, when reviewing a RR's Form U-4 on BrokerCheck.

Although interesting, the investing public acquires no value from learning that a registered representative is an Uber driver, paid coach for a children's select softball team, Treasurer for their HOA, rents out a condo, writes Yelp reviews for local restaurants, sells items on eBay for profit, or a multitude of other similar activities. Activities such as these cause no inherent conflicts of interest to the member firm or its customers and would not be viewed as services offered by the member firm. Thus, the disclosure of these activities serves to create unnecessary noise in the OBA disclosure section of a RR's Form U-4.

Similarly, family trusts are common estate planning tools amongst registered representatives and their immediate families which also arguably require disclosure under the current 3270 rule because they are serving as a trustee. Again, these activities in and of themselves cause no conflicts of interest for a member firm or its customers, and the public disclosure of the RR's trustee position results in an unnecessary disclosure of the private estate planning of registered representatives and their family members.

Revised Methodology of Disclosure

We suggest that FINRA consider a revised methodology that would continue to serve the purpose of review, approval/denial, and recordkeeping of outside business activities, along with disclosure to the investing public, but which would eliminate the unnecessary disclosure of certain activities:

- Registered Representatives would continue to be required to provide prior written notice per Rule 3270.
- Member firms would need to review all OBAs and determine if there is a potential conflict or interference with the RR's responsibilities, and whether the business could be viewed as that of the firm, as is required by current Rule 3270.
- If a proposed activity presents a potential conflict-of-interest or may interfere with the RR's responsibilities to the member firm, but the firm decides to approve the activity, then it would need to be disclosed to the investing public on the Form U-4.
- If a proposed activity could be viewed by customers or the public as part of the member's business, but the firm decides to approve the activity, then it would need to be disclosed to the investing public on the Form U-4.
- If a firm reviews a proposed activity and determines that it does not present a conflict nor interfere with the registered representative's responsibilities to the member firm or its customers, then, while it would need to be retained within the firm's records, it would not need to be disclosed on the Form U-4.
- In the same regard, if the firm determines that the activity would not be viewed by customers or the investing public as part of the member firm's business, then while it would need to be retained within the member firm's records, it would not need to be disclosed on the Form U-4.
- For approved activities that are not disclosed on the U-4, the member firm would be required to maintain a record as to how it came to the determination that a given activity did not pose a conflict of interest, would not interfere with the RR's responsibilities, and/or would not be viewed as part of the member firm's business.
- As is currently required, each member firm would need to keep a record of its compliance with these obligations with respect to each written notice received and would need to preserve such records pursuant to recordkeeping rules and timeframes.

The caveat to the above disclosure exclusions would be that all "investment-related" outside business activities would need to be disclosed on the Form U-4. Per the FINRA definition, "investment-related pertains to securities, commodities, banking, insurance, or real estate (including but not limited to, activity as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank or savings association where there is no existing affiliation with the member firm)."

FINRA could also decide to require that all activities that take up more than 10% of the registered representative's time or makes up 10% of their income be disclosed on the Form U-4, even if the firm has determined that the activity poses no conflict, does not interfere with the RR's responsibilities, and could not be viewed as part of the firm's business. This would align with the SEC requirements under the Part 2B of Form

ADV: Brochure supplement[1]. Due to the fact that these activities take up a significant amount of the RR's time and/or makes up a significant part of their income, disclosure of these activities could be relevant to a client's decision to do business with the RR.

Implication of Member Firm Approval

1st Global is concerned that a discrepancy sometimes exists between a member firm's obligation to promptly disclose an outside activity on the Form U-4, and FINRA's expectation that a disclosed outside activity has been fully evaluated for the purposes of "imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity." In other words, the perception or implication exists that a disclosed outside activity is in fact approved by the member firm. To demonstrate an example where this may not be the case, let's say a member firm expressly prohibits its registered representatives from serving in a fiduciary role for non-family members. However, one of its registered representatives learns that a customer has named him/her as trustee after the client's death, and so the RR is technically in that role and needs to petition the court *as the trustee* in order to get removed as the trustee. Because the firm would not want to get into a debate with regulators over the definition of the term "actively engaged", the firm requires the RR to promptly disclose the activity on the Form U-4, and the RR is reminded by the firm that the member firm's policy does not allow the activity. The registered representative seeks to comply with the member firm's policy but it takes several months to revise the trust. Should the member firm disclose the outside activity although it has been prohibited? If the member firm chooses to disclose the activity, is there an implication that the activity is approved by the member firm?

FINRA should expressly indicate that disclosure of an outside activity does not imply approval, or align its outside business activity rule to reflect member firm practice. This would prevent a scenario in which a member firm has not promptly reported an outside activity because the activity is still being evaluated by the member firm. Please be aware that in practice, member firms generally require approval of an outside activity before it is subsequently disclosed to FINRA.

Comments on CRD Disclosure system

On a related note, we wanted to make sure that FINRA is aware that the text box for disclosure of OBAs in CRD gives no ability to make the OBAs visually easy to read on the BrokerCheck system. For RRs with

[1] Part 2B ADV, Item 4B **Other Business Activities** – "If the supervised person is actively engaged in any business or occupation for compensation not discussed in response to Item 4.A, above, and the other business activity or activities provide a substantial source of the supervised person's income or involve a substantial amount of the supervised person's time, disclose this fact and describe the nature of that business. If the other business activities represent less than 10% of the supervised person's time and income, you may presume that they are not substantial."

multiple OBAs, the end result is a run-on text paragraph that is very difficult to read, and senior investors in particular would have difficult time in reading and deciphering this text. Instead, we suggest FINRA amend its system to allow for each OBA to be listed individually, or at a minimum, to add functionality to allow better formatting of the text by firms. The other alternative is to reduce the volume of OBAs that have to be disclosed (as we have suggested above) so that the OBA disclosure section is less crowded. This may also be an opportunity for FINRA to make the system more compatible with Excel, as the downloads of data from CRD result in countless hours of manual work to convert the CRD OBA data into a usable, sortable format by firms.

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Again, 1st Global appreciates the opportunity to comment on Regulatory Notice 17-20. We would be pleased to discuss any of these points further and to provide additional information you believe would be helpful.

Sincerely,

Adam Schaub, AVP
Chief Compliance Officer
1st Global Capital Corp.

Tamaris Conkleton
Compliance Consultant
1st Global Capital Corp.