

FINRA PROPOSES TO FINALIZE UPDATES TO OUTSIDE BUSINESS ACTIVITY RULES

On Jan. 22, 2026, FINRA filed a rule proposal (the Proposed Rule) with the U.S. Securities and Exchange Commission (SEC) to update existing outside business activity supervision requirements. The Proposed Rule is part of the ongoing *FINRA Forward* rule modernization initiative and is promulgated following a notice and comment period. With the January filing, the Proposed Rule is now under SEC review after benefitting from changes as a result of the comment period.

FINRA's proposal is intended to replace Rule 3270 (Outside Business Activities of Registered Persons) and Rule 3280 (Private Securities Transactions of an Associated Person) with a consolidated Rule 3290 (Outside Activities Requirements). The streamlined rule takes a risk-based approach to supervising outside activities, allowing broker-dealers to focus on activities that are solely investment-related instead of low-risk activities that are far removed from broker-dealer activities such as coaching youth sports, serving on civic boards, rideshare driving and other part-time positions. The SEC is currently accepting comments on the Proposed Rule through Feb. 24, 2026.

KEY TAKEAWAYS AND CHANGES FROM REGULATORY NOTICE 25-05

- The Proposed Rule significantly reduces the scope of reportable outside activities by narrowing the disclosure requirement to only apply when the activity undertaken by associated and registered persons is considered “investment-related activity.”
- Under the Proposed Rule, an associated person's activity at an *unaffiliated* Registered Investment Adviser is treated as an outside activity of the registered person and subject to prior written notice. This is a departure from the current state, which requires FINRA members to supervise the activity and record transactions as if executed on behalf of the member.
- The rule contains several exclusions for investment-related activities subject to a different regulatory regime, such as activity performed at an affiliate, and further permits broker-dealers to seek exemptive relief under the rules for certain situations, providing additional flexibility for firms to address special circumstances.

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SUMMARY OVERVIEW OF THE PROPOSED RULE

As noted above, FINRA previewed the updated rule change for the industry and solicited comments in March 2025 with Regulatory Notice 25-05 (the Notice) shortly after launching its *FINRA Forward* rule modernization initiative. The Proposed Rule builds on reforms first discussed in earlier regulatory notices^[1] and seeks to appropriately tailor long-standing compliance obligations to reflect current business operations. Notably, Rule 3290 adopts a bifurcated approach to outside activities supervision that includes the creation of additional obligations placed on firms when associated persons are participating in outside securities activities. Below are key takeaways of the Proposed Rule.

Narrowed Definitions: “Reportable Activities” and “Investment-Related Activity”

FINRA proposes to narrow the scope of reportable activities to those that are investment-related, which is defined as “pertaining to financial assets, including securities, crypto assets, commodities, derivatives (such as futures and swaps), currency, real estate or insurance.” Investment-related activities have been identified as holding the highest risk, whereby an associated person could be interacting with a retail investor customer and/or the public could mistake the activity as supervised within the scope of the broker-dealer. By benchmarking the reportability activities to the definition of investment related, FINRA endeavors to eliminate the white noise that has inevitably arisen in the context of the current broad supervision requirements.

FINRA further narrows the scope of “investment-related activity” by excluding the following activities that occur:

- At an affiliate of the broker-dealer, including investment advisory activity conducted for a dually registered broker-dealer/investment adviser, or separately, insurance or banking activity conducted for another affiliate of the member.
- On behalf of immediate family members for no selling compensation.
- On behalf of yourself for personal investment purposes only.
- In connection with the purchase, sale rental or lease of a main home and up to two secondary homes.

Further Exclusions and Exemptive Relief

The Proposed Rule recognizes that the following activities involving securities transactions are subject to separate regulatory regimes, and in turn, treats them as an outside activity of a registered person rather than an outside securities transaction:

- Acting as a portfolio manager or investment committee member for

registered and unregistered investment companies, business development companies, real estate investment trusts and entities that are recognized as tax exempt.

- Activity at an unaffiliated Registered Investment Adviser, which reverses long-standing guidance that previously required broker-dealers to treat such activity as if executed on behalf of the member firm.^[2] Members are free to impose supervisory obligations on their associated persons as a condition to participating in outside unaffiliated IA activity.
- Activity subject to a contractual agreement between a member and another entity (e.g., banking or insurance networking-related) provided that the activity is within the scope of the associated person's relationship with the member.
- Outside securities activity subject to the Gramm-Leach-Bliley Act or SEC Regulation R.

By excluding the above activities from supervision and recordkeeping requirements, FINRA advances a core tenet of FINRA Forward by eliminating duplicative and unnecessary regulatory burdens. Further, the Proposed Rule strategically incorporates Rule 3290 into the Rule 9600 series, allowing member firms to apply for exemptive relief from the rule in certain special situations.

Registered Persons with Outside Activities That Do Not Involve Securities Transactions

The treatment of outside activities undertaken by registered persons is a core change from the current regulatory framework. The Proposed Rule streamlines supervisory obligations by only requiring the registered person to submit written notice of the activity and the nature of their role in it. However, member firms are still required to adhere to the same assessment that they conduct today to accurately determine the risk level associated with any outside business activity.

The firm's assessment needs to evaluate whether the reported outside activity (1) is actually an outside securities transaction and, if so, whether there is an exemption available; (2) involves a customer of the registered person; (3) could interfere with the registered person's responsibilities to the member or the member's customers; and (4) could be viewed as an extension of the member's business. The Proposed Rule requires firms to evaluate whether specific conditions, limitations, or even a prohibition should be applied to the registered person's outside activity. In contrast with outside securities transactions discussed below, firms do not need to formally acknowledge the notice or approve of the activity.



Associated Persons with Outside Activities That Involve Securities Transactions

New Proposed Rule 3290 requires any associated person to provide written notice of any outside activity that involves securities transactions. If the activity will result in direct or indirect compensation to the associated person, they must obtain prior written approval from the member firm.

Similar to the requirements for outside activities of registered persons, the associated person's written notice must include a detailed description of the activity, the underlying transactions and their role in the activity (including receipt of any compensation). Firms are required to assess, at a minimum, whether the securities transaction (1) is a securities transaction involving compensation for sale activity; (2) involves a customer of the associated person; (3) will interfere with or otherwise compromise the associated person's responsibilities to the member or the member's customers; and (4) will be viewed by the member's 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.

Notably, if the transaction does not involve compensation to the associated person, firms need only acknowledge the notice and, if appropriate, establish conditions for participation. When the transaction involves compensation for sale activity, the broker-dealer must notify the associated person in writing of the decision to approve, approve with conditions or limitations, or disapprove the activity. Broker-dealers are then required to record each transaction in the firm's books and records and supervise the activity as if executed on behalf of the member.

In instances where an associated person is affiliated with more than one member, the members may develop a written allocation agreement whereby one member agrees to assume all compliance obligations, including supervision and recordkeeping, for the activity.

CONCLUSION

The Proposed Rule is a welcome development to modernize the existing, outdated requirements related to outside business activity and private securities transactions. FINRA is embracing the concept of risk-based supervision as a construct to enhance investor protection and ultimately provide firms with straightforward regulatory guidance that better fits their business operations today.

FINRA has filed the Proposed Rule with the SEC for approval, after which an effective date will be announced in a Regulatory Notice. The SEC is accepting public comments on the Proposed Rule as it considers whether to approve or deny the rule change. If the Proposed Rule becomes effective, we anticipate



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FINRA will be better positioned to identify genuine conflicts of interest and firms will be able to function more efficiently from a compliance perspective with greater certainty about the scope of their disclosure obligations.

If you need assistance preparing a comment letter or have questions about how FINRA's proposed new Rule 3290 may impact your firm, please reach out to your regular Armstrong Teasdale lawyer or one of the listed authors.

[1] Previously, FINRA solicited comments on proposed change through Regulatory Notice 17-20 (May 15, 2017) and Regulatory Notice 18-08 (Feb. 26, 2018).

[2] See Notice to Members 94-44 (May 1, 1994) and Notice to Members 96-33 (May 1, 1996).