



February 24, 2026

Submitted By SEC Webform¹

Sherry R. Haywood
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File No. SR-FINRA-2026-001: Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3290 (Outside Activities Requirements)

Dear Ms. Haywood:

On behalf of the U.S. members of the North American Securities Administrators Association, Inc. (“NASAA”),² I am writing in response to U.S. Securities and Exchange Commission (“SEC” or “Commission”) Release No. 34-104746, *Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3290 (Outside Activities Requirements)* (the “Proposal”), recently filed with the SEC by the Financial Industry Regulatory Authority, Inc. (“FINRA”) as SR-FINRA-2026-001.³ NASAA submitted a comment letter to FINRA on May 13, 2025, recommending certain revisions to proposed Rule 3290 to assure appropriate firm oversight of agents and employees.⁴ We restate our most significant recommendation here: the Proposal should be revised to state the definition of “investment-related activity” more broadly, as described below. We also recommend that the Proposal be revised to require firms to consider the potential risk of an activity or securities transaction to all of their customers in the required assessment, and to tailor, rather than eliminate, firms’ obligations to supervise outside investment advisory activities.

¹ <https://www.sec.gov/comments/sr-finra-2026-001/notice-filing-proposed-rule-change-adopt-finra-rule-3290-outside-activities-requirements#no-back>.

² Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

³ The Proposal is available at <https://www.sec.gov/files/rules/sro/finra/2026/34-104746.pdf>.

⁴ [Letter from Leslie M. Van Buskirk, NASAA President and Administrator, Division of Securities, Wisconsin Department of Financial Institutions, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Re: Regulatory Notice 25-05: Outside Activities \(May 13, 2025\)](#).

I. The definition of “investment-related activity” should be stated more broadly.

In our prior letter to FINRA, NASAA supported the Proposal’s broad focus on activities that “pertain[] to financial assets,” but we recommended that the definition of “investment-related activity” be stated more broadly.⁵ NASAA appreciates that FINRA made one change consistent with our recommendations before presenting the Proposal to the SEC. Specifically, the Proposal confirms that Rule 3290 would require written notice before a registered person can act 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.⁶ However, FINRA declined to take our most important recommendation; namely, that it broaden the stated definition of “investment-related activity” in Rule 3290. We reiterate that recommendation here.

The Proposal’s definition of “investment-related activity” is appropriately broad in principle, but remains too narrow in expression. Accordingly, we recommend that the definition be revised as follows:

- (3) “Investment-related activity” means pertaining to financial assets, including, **but not limited to,** securities, crypto assets, **collectibles,** commodities, derivatives (such as futures and swaps), currency, banking, **lending,** real estate or insurance.
- (A) The term includes, but is not limited to, acting as or being associated with a broker-dealer; issuer; insurance agent or company; investment company; **private fund; investment partnership or cooperative; crypto asset developer, promoter, or market intermediary;** investment adviser; futures commission merchant; commodity trading advisor; commodity pool operator; municipal advisor; futures sponsor; bank; savings association; **or credit union; or money transmitter, regardless of whether any of the foregoing is properly registered or licensed with appropriate regulatory authorities.**
- (B) The term also includes an associated person’s participation in any manner in a personal investment involving a securities transaction, sometimes referred to as “buying away,” other than transactions indicated in paragraph (g)(3)(A)

⁵ The Proposal rightly makes clear that it “does not impact reporting on Form U4” and states that “FINRA would endeavor to work with the SEC and states to harmonize the requirements where appropriate.” Proposal at 17 n.20, 33. This is appropriate because Form U4 is a shared form maintained by both NASAA members and FINRA. Form U4 is designed to serve the needs of regulators by providing information that they deem relevant to facilitate registration determinations, examinations, and other regulatory functions. It is therefore appropriate that Form U4 captures more information than firms need to fulfill their supervisory obligations. However, NASAA is open to discussing expanding the definition of “investment-related” where it currently applies on Form U4 to harmonize it with a broader definition of “investment-related activity.”

⁶ Proposal at 12-13; Rule 3290, Supplementary Material .02 (stating that such activities “shall be considered an outside activity of a registered person” and clarifying that “an associated person’s activities related to purchasing or selling such entities’ shares” may constitute participation in an outside securities transaction).

of this Rule. A personal investment involving a securities transaction shall include any securities transaction for which an associated person has a beneficial interest. This shall include those by or on behalf of: (i) a spouse or domestic partner of the associated person; (ii) a child of the associated person or of the associated person's spouse or domestic partner, provided that the child resides in the same household as or is financially dependent upon the associated person; or (iii) any other person who resides in the same household as the associated person and is financially dependent upon the associated person.

Our proposed revisions would confirm what we understand to be the intended breadth and flexibility of Rule 3290, and forestall any potential confusion about its scope.⁷

Most importantly, the revised rule text would clarify that the examples listed are illustrative, not exhaustive. This would help to ensure that Rule 3290 remains applicable as technology, products, and the markets continue to evolve. Further, the addition of collectibles and lending to the definition would clarify that Rule 3290 would apply to these activities and investments, which pose a risk to investors and FINRA member firms that is similar to the risk posed by other enumerated items, but might otherwise be unreported and unscrutinized if they do not fit neatly or obviously within the existing categories under the circumstances. It is not unusual for collectible assets like art, wine, whisky, and rare coins to be marketed (sometimes fraudulently) as alternative investments that offer diversification and growth potential.⁸ These assets should be covered by Rule 3290 when they are offered, sold, or purchased for speculation or investment. Likewise, some investments may be marketed as loans, potentially misleading firms and associated persons into believing that they do not need to be reported.⁹ The proposed rule should also apply to any business activity that involves making loans, regardless of the source.

⁷ We appreciate that FINRA received contradictory views on its proposed definition, with some commenters (including NASAA) saying the definition should be broadened and others saying it should be narrowed. *See* Proposal at 23-24. However, we do not believe the difference in views is actually that great. In advocating for our “broader” definition, we are not recommending that registered persons be obligated to disclose activities like refereeing, chauffeuring, or bartending, which the Proposal terms “white noise.” *See* Proposal at 6. On the other hand, we doubt that commenters advocating for a “narrower” definition would argue in good faith that developing and promoting crypto assets, intermediating payments, lending money, or brokering the purchase or sale of collectible investments should not be included within the scope of Rule 3290.

⁸ *See, e.g.,* [Bryan McKenzie, Stocks, Bonds and Wine: For Some Investors, Collectibles Provide Diversity, The Darden Report](#) (July 27, 2023); [Shane Hickey, Liquid gold? Here's the sobering truth about investing in whisky, The Guardian](#) (Apr. 10, 2023); [RBC Wealth Management, Is Artwork a Wise Investment?](#) (last visited Feb. 10, 2026); [Complaint, CFTC et al. v. TMTE, Inc. a/k/a Metals.com et al.](#), Case No. 3-20CV2910-L (N.D. Tex., Sept. 22, 2020).

⁹ *See, e.g.,* [Consent Order, Woodbridge Mortgage Investment Fund I, LLC et al.](#), Docket No. E-2015-0039 (Mass. Sec. Div., May 4, 2015); [Consent Order, Everlight Financial, Inc. and Russell Ivan Morgan II](#), Admin. Order No. CO-2018-0021, ¶¶ 13-14 (Ala. Sec. Comm., Mar. 31, 2020) (noting that respondent, a Woodbridge sales agent and former registered broker-dealer agent and investment adviser representative, “stated that Woodbridge described

Our proposed additions to subparagraph (A) would clarify the types of activities involving crypto assets, money transmission, and investment funds that fall within Rule 3290. While FINRA helpfully clarified that Rule 3290 would apply to both registered and unregistered funds, we believe the definition should also include less formal partnership and cooperative structures. Although many of these structures may ultimately be “investment companies,” including less formal examples in the definition would help to clarify the need for member firms and associated persons to focus on substance over form in considering whether the activity is reportable. The definition should also clarify that Rule 3290 would apply to a variety of activities involving crypto assets, regardless of whether the activity involves the offer or sale of any particular crypto asset and regardless of the regulatory classification of any particular crypto asset. We believe that both FINRA and the SEC would agree that Rule 3290 should encompass activities like promoting or developing new crypto assets or intermediating crypto asset transactions. Our proposed revisions are intended to address this evolving asset class and related technology with enough flexibility to encompass the various ways in which they might be integrated into existing business models.

Our proposed revisions to subparagraph (B) would reinsert language that FINRA removed from the Proposal before filing it with the SEC.¹⁰ This revision would help to prevent intentional and unintentional circumvention of Rule 3290 by focusing on substance (the associated person’s beneficial interest in the securities transaction) over form (the specific person by whom, or on whose behalf, the transaction is nominally executed). The Proposal does not explain why FINRA elected to remove this language, but it may have done so in response to comment letters seeking clarification about how Rule 3290 would apply to an associated person’s beneficial interest in investments by family members.¹¹ We believe these commenters’ concerns are adequately addressed by the fact that the rule is focused on the associated person’s “participation” in the transaction, and it would likely require only notice and assessment in most cases, not approval or supervision. We do not read the words “shall include” in the third sentence to automatically require an associated person to report *all* securities transactions by or on behalf of spouses, children, or dependents, regardless of the other facts and circumstances. Nonetheless, we believe that any concern about such an interpretation would be adequately addressed by revising that sentence to say that a transaction for which an associated person has a beneficial interest “may include” transactions by or on behalf of the specified individuals. This revision would inform firms and associated persons that their obligations are not limited to transactions executed in an associated

the product as a loan and represented the loan was not a security”); [Consent Order, Roy B. Harrison \(CRD # 1133999\)](#), Docket No. 20E082, KSC No. 2018-6516, ¶ 24 (Kan. Sec. Comm.,) (stating that respondent, a Woodbridge sales agent, licensed insurance agent, and former registered broker-dealer agent, “contacted a Woodbridge representative and was assured the promissory notes were considered loans and not securities”).

¹⁰ See [Regulatory Notice 25-05](#) (Mar. 14, 2025), Attachment A at 3 (text of proposed Rule 3290(f)(2)(B)).

¹¹ See [Letter from Jessica Giroux, General Counsel, American Securities Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA](#), Re: *Regulatory Notice 25-05, FINRA Requests Comment on a Proposal to Reduce Unnecessary Burdens and Simplify Requirements Regarding Associated Persons’ Outside Activities*, 3 (May 13, 2025); [Letter from Bernard V. Canepa, Managing Director and Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA](#), Re: *Regulatory Notice 25-05: Outside Activities*, 4 (May 14, 2025).

person's name, while clarifying that a "beneficial interest" is not automatically imputed to the associated person whenever the specified individuals buy securities.

II. The required assessment of reported activities should encompass all firm customers.

The Proposal would expressly require FINRA member firms to assess the reported activity or transaction and determine whether to impose conditions or limitations, up to and potentially including disapproval or prohibition.¹² NASAA generally supports these requirements, as well as the Proposal's standardization of the minimum factors that a firm must consider in its assessment. However, FINRA made one change that we believe unnecessarily weakens the Proposal. As proposed in Regulatory Notice 25-05, Rule 3290 would have required firms to consider whether the activity or securities transaction "involves a customer of the [firm]."¹³ In contrast, the Proposal would require firms to consider whether the activity or transaction "involves the customer *of such associated or registered person.*"¹⁴

This change to the Proposal could increase the risk that firms will fail to adequately consider potential risks to their customers. For example, an associated person who is employed in an operational role might have access to customer information or firm systems, but might not have "customers." Thus, an outside securities transaction by that person would not "involve[]" a customer of the associated person," even if they have solicited or intend to solicit existing customers of the firm. That is an unnecessary gap in the oversight framework of Rule 3290. By circumscribing the scope of this factor in the firm's assessment, the Proposal could incentivize firms and associated persons to employ an inappropriately "light touch"¹⁵ in supervising certain activities, potentially increasing risk to the firm's customers.

FINRA explains that it "agrees with" concerns raised by certain industry commenters regarding "the practical challenges of determining whether the activity involves the member's customers (as opposed to customers of the associated person or registered person)."¹⁶ While we understand the concerns expressed by these commenters, we believe that the Proposal goes too far in limiting this factor to "customer[s] of" the individual associated or registered person. Rule 3290 should require firms to consider whether the activity or securities transaction "involves a customer of the [firm]," as initially proposed. The concerns expressed by these commenters can be adequately addressed through guidance or supplementary material explaining that Rule 3290 requires a point-in-time assessment based on the information available to those reviewing the

¹² See *id.* at 8-10.

¹³ See [Regulatory Notice 25-05](#), Attachment A at 2 (text of proposed Rule 3290(c)(1)(B), (d)(1)(B))

¹⁴ Proposal at 9 (emphasis added).

¹⁵ *Cf. id.* at 21 ("To the extent that associated persons may seek employment with members based on their policies regarding outside activities, some members may face pressure to use a light touch in their assessment of outside activities and the associated determinations.").

¹⁶ *Id.* at 26-27.

notice. At minimum, the Proposal should be amended to specify in supplementary material that the involvement of firm customers after the initial notice is a “material change” that requires updated notice and review.¹⁷

III. FINRA should tailor, not eliminate, its member firms’ oversight responsibilities for outside investment advisory activities.

In Regulatory Notice 25-05, FINRA elected not to advance an earlier proposal to eliminate FINRA member firms’ existing supervisory and recordkeeping obligations related to their associated persons’ outside unaffiliated investment advisory activities.¹⁸ NASAA and others supported the retention of those obligations.¹⁹ We understand concerns about the compliance burden and practical difficulties of supervising unaffiliated investment advisory activities,²⁰ and appreciate that the Proposal would continue to require notice and assessment of those activities.²¹ However, we believe that the Proposal goes too far by entirely eliminating supervisory obligations for unaffiliated investment advisory activities.

As we explained in our previous letter to FINRA, its member firms have unique insights into the day-to-day activities of their associated persons and effective supervision is a complement to regulatory oversight.²² For example, state securities regulators have uncovered egregious misconduct related to private securities transactions and outside investment advisory activities that demonstrate the importance of firm-level oversight.²³ We believe that requiring FINRA member

¹⁷ See *id.* at 7-8.

¹⁸ See *id.* at 30 (“The [Regulatory Notice 25-05] Proposal maintained the status quo regarding members’ recordkeeping and supervisory responsibilities for outside unaffiliated IA activity.”); [Regulatory Notice 25-05](#) at 3.

¹⁹ See NASAA letter, *supra* note 4; Proposal at 31 n.47 (citing comment letters from NASAA; Massachusetts Secretary of the Commonwealth, William F. Galvin; the Financial Services Institute; and the Public Investors Advocate Bar Association).

²⁰ See Proposal at 30-32.

²¹ See *id.* at 32; Rule 3290, Supplementary Material .03.

²² See NASAA letter, *supra* note 4, at 2, 7-8.

²³ See *id.* at 7-8; [Stipulation and Consent Order, Jody Vander Weide, CRD No. 2571083](#), Docket Nos. ENF-25-020027, ENF-25-020028 (Mich. Dept. of Lic. and Reg. Affairs, Corp., Sec. & Comm. Lic. Bur., June 12, 2025) (resolving allegations that former registered agent charged unauthorized investment advisory fees to brokerage customers); Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Douglas S. Miller, CRD No. 1946240*, Order No. 17-013 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017) (action to suspend or revoke license, following disclosure that individual was “permitted to resign” from broker-dealer “while under internal review for violation of firm policy with respect to private securities transactions”); Notice of Intent to Suspend or Revoke Ohio Investment Adviser Representative License No. 1946240 and Notice of Opportunity for Hearing, *Gary L. Rathbun, CRD No. 1084721*, Order No. 17-012 (Ohio Dept. of Commerce, Div. of Sec., May 26, 2017) (same); [Ohio Atty. Gen., Press Release, Reindictment Filed in Investment Case](#) (July 17, 2024), (naming Doug Miller and Gary Rathbun among criminal defendants in indictment related to \$72 million fraud).

firms to supervise their associated persons' outside investment advisory activities is a reasonable allocation of responsibility to address the risk of investor harm.

If FINRA and the SEC believe that changes are necessary, we recommend that FINRA tailor firms' oversight responsibilities for these activities instead of eliminating them altogether. A reasonable alternative would be to require notice of outside investment advisory activities from all associated persons, firm approval before engaging in such activities at an unaffiliated investment adviser, and firm supervision of the approved activities, but at the same time limit the firm's supervisory obligations under Rule 3290 to the person's advisory clients who are also customers of the firm and advisory accounts for which the firm is the custodian. FINRA could also clarify in guidance that firms are not responsible for ensuring that the investment adviser complies with certain "back-office" regulatory requirements, such as recordkeeping.²⁴ This tailored approach would align supervision with firm interests and their broader responsibilities to their customers,²⁵ while helping to mitigate concerns about access to information, privacy, jurisdiction, and overall compliance burden.²⁶

To the extent that FINRA and the SEC are inclined to move the Proposal forward with no supervision requirement, we recommend that the Proposal be revised to more directly encourage firms to impose conditions or limitations on outside investment advisory activities when the firm makes certain findings in the required assessment. Specifically, the Proposal should set the expectation that firms will impose conditions or limitations if they determine that (1) the activity will involve customers of the member firm, (2) the activity is reasonably likely to interfere with or otherwise compromise the associated person's responsibilities to the firm or the firm's customers, or (3) the activity is reasonably likely to be viewed by the firm's customers or the public as part of the firm's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. As proposed, Rule 3290 would already require firms to consider these and other factors, "at a minimum," upon receiving notice of the proposed outside activity.

²⁴ By suggesting that FINRA tailor or limit firms' supervisory obligations for unaffiliated investment advisory activity by their associated persons, we do not in any way suggest that firms may ignore or discount evidence of suspicious activities or red flags arising from activities that they do not supervise. We appreciate FINRA's confirmation that "nothing in the [P]roposal would alter the well-settled principle that members must consider 'red flags' indicating problematic activities." Proposal at 9-10 n.8. We recommend that FINRA reiterate this warning in guidance or supplementary material and emphasize that firms must consider any red flags related to their associated persons' unaffiliated investment advisory activities as part of their core supervisory obligations. *See* FINRA Rule 3110(a) ("Each member shall establish and maintain a system to supervise *the activities of each associated person* that is reasonably designed to achieve compliance with *applicable securities laws and regulations*, and with applicable FINRA rules.") (emphases added).

²⁵ *See, e.g., Letter from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Re: Regulatory Notice 18-08 | FINRA Requests Comment on Proposed New Rule Governing Outside Business Activities and Private Securities Transactions (Notice)*, 5 (Apr. 27, 2018) ("In [some] cases, investment advisory clients may also be clients for broker dealer and/or insurance or advisory services. [...]. Thus, like the services they provide, FSI member firms have an interest in taking the same holistic view towards investor protection in respect of these clients. FSI's members believe that, in the client's view, these services are interconnected.").

²⁶ *See* Proposal at 30-31.

Therefore, this assessment would not meaningfully increase the burden of compliance with the rule. This approach would better align the oversight framework for outside investment advisory activities with the realities of the modern securities industry and the needs of investors, while mitigating the compliance burden on FINRA member firms.

IV. Conclusion

NASAA appreciates the opportunity to comment again on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in cursive script that reads "Marni Rock Gibson". The signature is written in black ink and is positioned above the printed name.

Marni Rock Gibson
NASAA President and
Commissioner, Kentucky Department of
Financial Institutions