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Truly RIA-Friendly Broker-Dealers on the Horizon?

By John I. Sanders and Lauren Henderson

FINRA recently proposed a rule (the “*Proposed Rule*”) addressing FINRA-registered broker-dealer’s (“*Broker-Dealers*”) responsibilities to supervise the outside business activities of their registered representatives (“*Registered Representatives*”). [1] According to FINRA, the Proposed Rule is “intended to reduce unnecessary burdens while strengthening investor protections relating to outside activities.” [2] Notably, the Proposed Rule, if adopted, would finally permit Broker-Dealers to be friendly to registered investment advisers (“*RIAs*”). The Proposed Rule eliminates Broker-Dealer’s ongoing supervision requirements with respect to their Registered Representatives’ investment advisory activities, including serving as investment adviser representatives (“*IARs*”) of RIAs. The Proposed Rule eliminates various supervisory requirements of Broker-Dealers over such Registered Representatives, including e-mail monitoring and advertisement review. The Proposed Rule also limits the Broker-Dealer’s recordkeeping obligations by requiring the Broker-Dealer to only keep records demonstrating compliance with the Proposed Rule. For example, a Broker-Dealer’s recordkeeping requirements generally only apply to the extent that the Broker-Dealer imposes limitations on the investment advisory activity. [3] The Proposed Rule does not, however, eliminate all Broker-Dealer obligations with respect to Registered Representatives serving as IARs. Under the Proposed Rule, Broker-Dealers must perform a reasonable risk assessment of the outside business activity, and may approve a Registered Representative to serve as an IAR of an RIA, with or without limitations. [4] The Proposed Rule recognizes Broker-Dealer supervision of investment advisory activities only creates obstacles for Broker-Dealers, Registered Representatives, RIAs, and IARs, especially considering RIAs and IARs are subject to their own regulatory scheme designed to protect investors. We welcome this long-overdue development. If you have any questions related to the Proposed Rule or Broker-Dealer or RIA regulation generally, please feel free to contact us. **John I. Sanders** and **Lauren Henderson** are associates based in the firm’s Winston-Salem office. [1] FINRA, *Proposed Rule: Outside Business Activities*, Regulatory Notice 18-08 (Feb. 2018), available at <http://www.finra.org/industry/notices/18-08>. [2] *Id.* [3] *Id.* A broker-dealer has greater record keeping and supervisory obligations when the representative relies on the broker-dealer’s broker or dealer registration to conduct the activities. In this circumstance, the activity is deemed to be the broker-dealer’s business and is subject to all applicable securities laws and regulations, including recordkeeping and supervision. [4] *Id.*