

## Attachment C

Below is a series of hypothetical questions and answers indicating how Rules 3270 and 3280 currently apply in comparison to how the Proposal would apply. Please note that the Proposal would replace Rules 3270 and 3280.

- **Scenario 1.** Away from the member, a non-registered associated person purchases shares of a private placement from an issuer or BD.

Rule 3280 would apply as the associated person's purchase of the private placement away from the member is considered a personal or "buying away" private securities transaction that is not otherwise exempted by, for instance, being subject to Rule 3210.

Rule 3270 would not apply for several reasons – the activity is not an outside business activity, the rule only applies to registered persons and there is an exemption for activity covered by Rule 3280.

The Proposal would apply based on the same rationale provided above for Rule 3280.

- **Scenario 2.** A registered person, away from the member, recommends a private placement to a customer, assists with completing the customer's subscription agreement, handles customer funds regarding the private placement and receives selling compensation.

Rule 3280 would apply to the registered person's activity with the customer away from the member. The fact that the registered person, away from the member, recommends the private placement to a customer, assists with completing the customer's subscription agreement and handles customer funds constitutes "participation in" a private securities transaction (this type of private securities transaction is sometime referred to as "selling away"). If approved, the member would have supervisory and recordkeeping obligations as the registered person is receiving selling compensation.

Rule 3270 would not apply to the registered person's activities because Rule 3270 exempts activities covered by Rule 3280.

The Proposal would apply based on the same rationale provided above for Rule 3280.

- **Scenario 3.** A registered person has an LLC that invests in private placements away from the member.

Rule 3280 would apply because the LLC invests in private placements away from the member, often called "buying away."

Rule 3270 would not apply to the registered person's activities because Rule 3270 exempts activities covered by Rule 3280.

The Proposal would apply based on the same rationale provided above for Rule 3280.

- **Scenario 4.** A registered person is the sole proprietor of a business that sells antique furniture online.

Rule 3270 would apply because she is the sole proprietor of a business.

Rule 3280 would not apply because she is not participating in a private securities transaction.

The Proposal would not apply as the activity does not meet the definition of “investment-related activity.”

- **Scenario 5.** An associated person who is dually registered with a member and an affiliated IA firm performs a review of an IA client’s portfolio and advises the IA client to rebalance the portfolio by liquidating some securities and purchasing additional shares of others. The IA client agrees with the recommendations and the dually registered person places the securities orders. The dually registered person receives fees related to the IA client’s assets under management (AUM).

Rule 3280 would apply because the dually registered person placed the securities orders. According to a series of *Notice to Members* in the 1990s, a dually registered person who, away from a member, provides more than mere securities advice as an IA (*i.e.*, effects or places a securities order) is participating in a private securities transaction for purposes of Rule 3280. Those same *Notices* also state that AUM fees constitute selling compensation. As a result, under Rule 3280, the member would need to supervise this IA activity away from the member and record the transactions on its books and records if it approves the activity.

Rule 3270 would not apply because Rule 3270 exempts activities covered by Rule 3280.

The Proposal would not apply in this scenario because the activity occurred at an affiliated IA. The Proposal excludes activity at an affiliate in recognition of a member’s ability to implement meaningful controls across business lines.

- **Scenario 6.** The same facts as **Scenario 5** except that the IA firm is not affiliated with the member.

The result under Rule 3280 and 3270 would be the same as the response to **Scenario 5**.

However, because the IA firm is not affiliated with the member, the result under the Proposal would be different than **Scenario 5**. With that fact changed, the Proposal would apply to the same extent as Rule 3280 in **Scenario 5**.

- **Scenario 7.** The same facts as **Scenario 6** except that the dually registered person only provides advice and does not place any securities orders – the IA client places the orders online in her self-directed account at another member.

Rule 3280 would not apply under these new facts because the dually registered person only provides advice to the IA client without placing the orders.

Rule 3270 would apply because this is an outside business activity that is not captured by Rule 3280.

The Proposal would capture the activity because it is investment related, but it would be treated as an outside activity rather than an outside securities transaction because the dually registered person only provides advice to the IA client and does not place the orders, with the result that, as with Rule 3270, the member would not have supervisory and recordkeeping responsibilities for the activity under the Proposal.

- **Scenario 8.** A registered person receives selling compensation for selling shares of a hedge fund that is not affiliated with the member.

Rule 3280 would apply because the registered person is participating in a PST for selling compensation. If approved, the member would need to record and supervise the securities transactions.

Rule 3270 would not apply to the registered person's activities because Rule 3270 exempts activities covered by Rule 3280.

The Proposal would apply to the same extent as Rule 3280.

- **Scenario 9.** An individual is registered with and compensated by multiple members as a Financial and Operations Principal (FINOP). The individual does not engage in any other activities at the members.

Rule 3270 would apply as the FINOP is being compensated by multiple members.

Rule 3280 would not apply because there is no indication that the FINOP is participating in PSTs.

The Proposal would apply as it is "investment-related activity." Under this scenario, there would be a prior written notice obligation. However, because the FINOP is not participating in outside securities transactions involving selling compensation, the members would not have to supervise or record the outside activity.

- **Scenario 10.** A registered person is employed by a driving service on weeknights and referees football games on weekends. He is compensated for both activities.

Rule 3270 would apply because the registered person receives compensation from another person outside the scope of his relationship with the member.

Rule 3280 would not apply because the registered person is not participating in a PST.

The Proposal would not apply because the activity is not investment related.